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DR *BURN*'s

JUSTICE of the PEACE.^{ILL.}

VOL. II.

MOVEMENTS,
le, Esq.

53 G. III.

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1914

1915

1916

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1918

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1922

Henry Reid

THE
JUSTICE of the PEACE,
AND
PARISH OFFICER.

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-SECOND EDITION:

With many CORRECTIONS, ADDITIONS, and IMPROVEMENTS,

By JOHN KING, of the Inner Temple, Esq.

BARRISTER AT LAW.

The CASES brought down to the End of EASTER Term, 53 G. III.

And the STATUTES to the 54 G. III. c.47. (1814.)

IN FIVE VOLUMES.

VOL. II.

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1814.

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10/11/21



Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables, and other peace officers are concerned therein, are in some measure connected and interwoven with each other, it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

Sect. I. *Of the customs in general.*

II. *Of regulations relating to emigration.*

III. *Of the excise in general.*

IV. *Of warehousing goods.*

V. *Of the several particulars under the management of the commissioners of the customs and excise.*

I. *Of the customs in general.*

[13 & 14 C. 2. c. 11. f. 5—7. 15. — 6 W. c. 1. f. 5. 6. — 8 Ann. c. 7. f. 17. c. 13. f. 16. — 6 G. c. 21. f. 34. 38—43. — 8 G. c. 18. f. 6—8. 10. 16. — 11 G. c. 30. f. 16. 18—21. 32. — 12 G. c. 28. f. 3. — 9 G. 2. c. 35. f. 10—13. 17—21. 23. 29. 34. 39. — 19 G. 2. c. 34. f. 1—6. 9—11. 23. — 19 G. 2. c. 35. f. 28. — 33 G. 2. c. 9. f. 16. — 5 G. 3. c. 43. f. 38. — 9 G. 3. c. 6. f. 1—19 G. 3. c. 69. f. 1. 2. 3. 7. 12. 23. — 21 G. 3. c. 39. f. 1. 2. 4. 6. — 24 G. 3. c. 47. f. 2. 1—4. 7—10. 13—16. 19. 29. 30. 35. — 26 G. 3. c. 73. f. 44. — c. 77. f. 18. — 27 G. 3. c. 13. f. 31. — c. 31. f. 9. — c. 32. f. 15. — 28 G. 3. c. 23. c. 34. f. 10—14. — 34 G. 3. c. 50. f. 5. 11. 12. c. 68. f. 18. 19. — 43 G. 3. c. 29. f. 9 c. 157. f. 2. — 49 G. 3. c. 65. c. 98. f. 1. 2. 9. 10. 14—16. 25. 43. 53. — 52 G. 3. c. 141. c. 143.]

By 52 G. 3. c. 143. reciting it to be expedient, that the provisions contained in any laws then in force, for collecting his majesty's revenue in *Great Britain*, whereby the penalty of death is imposed for any act done in breach of or in resistance to the said laws, or any of them, should be amended and reduced into one act: it is enacted, That in

Offences against
revenue laws,
how punishable.

all cases where any act to be done or committed after the passing of this act, in breach of or in resistance to any part of the laws for collecting his majesty's revenue in *Great Britain*, would by the laws now in force subject the offender to suffer death, as guilty of felony, without benefit of clergy, by virtue of the said laws, or any of them, such act, so to be done or committed, shall be deemed and taken to be felony with benefit of clergy, and punishable only as such, unless the same shall also be declared to be felony without benefit of clergy by this act.

After 10th May 1787 the rules annexed to the two books of rates of 12 G. 2. and 11 G. 1. shall be repealed, 27 G. 3. c. 13. s. 31.

Former duties
repealed.

By 49 G. 3. c. 98. after the 5th of July 1809, all the subsidies, customs, impositions, or duties whatever, respecting the revenue of customs, payable by virtue of any act then in force upon the importation or exportation of any goods, wares, or merchandize into or from *Great Britain* or upon any such being brought or carried coastwise, or from port to port within the same, or upon any vessel according to the tonnage thereof (except as therein after is provided) entering or clearing outwards or inwards, at any port within *Great Britain*, and the respective drawbacks allowed upon the exportation of any goods, &c. from *Great Britain*, and also all the additional imposts or duties charged upon the product or amount of the said several duties of customs, shall cease and determine; except in cases relating to the recovery of arrears, or of any fine, &c. before then incurred. s. 1.

Exceptions.

Provided, that the act shall not extend to any duties payable to the city of *London*, or to any other city or town corporate within *Great Britain*; or to any other special privilege or exemption to which any person, or body politic or corporate, is by law entitled; nor does the act extend to alter the provisions in the acts for the union of *Great Britain* and *Ireland*; or of any other act by which goods imported or exported are to remain liable to or be exempted from duties of customs, &c., nor the duties on vessels granted by 39 G. 3. c. 69. of the local and personal acts, and 39 & 40 G. 3. c. 80. nor to charge with tonnage duty certain fishing vessels; nor to repeal any drawback allowed to officers in the navy, nor to prevent tobacco for the use of the crew being removed from warehouses duty free, provided the conditions are observed; nor to charge the tonnage duty on any British-built vessel, &c. not required to be registered. s. 1. 9. 10. 14. 15. 16. 25.

New duties.

And in lieu of the duties repealed, there shall be raised and collected upon goods, wares, or merchandize, imported and brought into *Great Britain*, or carried coastwise to or from port

port to port as aforesaid, and upon vessels according to their tonnage entering outwards or inwards as aforesaid, the several duties of customs as the same are respectively set forth in the schedule and tables to the act annexed, marked A. B. and C. and the several drawbacks allowed, as the same are in the said schedule and tables set forth. *f. 2.*

[These schedules and tables being long, and not much connected with the office of a justice of the peace, it is not thought necessary to insert them at large, but to refer to the act itself.]

And the new duties and drawbacks shall be levied and allowed, in like manner as the old duties and drawbacks, [unless hereby altered,] and all penalties, fines, and forfeitures, (unless expressly altered by this act,) shall be recovered in the like manner as by former acts directed; and all acts in force on 5th July 1809 relative to the customs shall remain in full force, unless hereby altered. *f. 43. (See (post) 46 G. 3. c. 112. and 49 G. 3. c. 65.)*

To be recovered in the same manner as the old, and penalties to be recovered as by former acts.

Any action or suit, in pursuance of this act, (49 G. 3. c. 98.) is to be brought within three calendar months next after the fact committed, and laid in the county or place in which the cause of complaint arose; and the defendant may plead the general issue, and give the special matter in evidence; and in case of verdict, nonsuit, or discontinuance, or judgment on demurrer, shall have treble costs. 49 G. 3. c. 98 *f. 53.*

Action when brought.

By 27 G. 3. c. 31. All goods, wares, and merchandize which shall be unshipped, landed, or delivered out of any vessel or boat before the duties are fully paid or secured shall be forfeited, together with the package containing the same, and may be seized by the officer of excise. And every person who shall unship, land, or deliver any such goods for which the duties have not been paid or secured as aforesaid, or shall be aiding or assisting therein, or shall hide or conceal or receive into his custody any such goods, knowing the same to have been so unlawfully landed, he shall forfeit treble the value thereof, to be estimated according to the highest rate goods of the best quality of that kind shall then sell for in London. *f. 9.*

Goods landed before payment of the duties, shall be forfeited.

[This equally applies to the new duties as it did to the 27 G. 3. c. 13.; for by *f. 43.* of 49 G. 3. c. 98. the goods, &c. and vessels are liable to the same conditions, seizures, and forfeitures as heretofore, unless where altered by the act.]

When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power,*

Appointing and swearing commissioners.

of the trust committed to their charge and inspection, and that they will not take or receive any reward or gratuity directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs on any account whatsoever. 6 W. c. 1. s. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall, at their admission, if it is within the ports of London, take the said oath before two commissioners; and elsewhere before two justices of the peace in the county, town, or place where his employment shall be; and every person not taking such oath shall forfeit his office. *Id.*

And the persons hereby respectively authorized to administer the oath shall certify the taking thereof to the next sessions to be held for the county or place where the oath was administered, to be kept amongst the records. *Id.* s. 6.

By the 13 & 14 C. 2. c. 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. s. 15.

But by the 8 G. c. 18. [continued by 43 G. 3. c. 29. s. 9. to the end of the session after 29th Sept. 1809, made perpetual, by 49 G. 3. c. 20. s. 4.] Spirituous liquors, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other packages, may be seized by any officer of the customs or excise; or by such persons as shall be deputed by warrant from the lord treasurer, or undertreasurer, or by special commission under the great or privy seal, but by no other person. s. 24.

And by the 33 G. 2. c. 9. Officers of excise as well as those of the customs may seize all ships, vessels, boats, wherries, pinnaces, barges, or galleys, liable to be forfeited for any of the reasons contained in any of the acts of 8 G. c. 18. 11 G. c. 30. 12 G. c. 28. hereafter following, and proceed to condemn the same as the officers of the customs may do. s. 16.

And by the 9 G. 3. c. 6. The officers of excise may seize horses or other cattle and carriages used in removing, carrying, or conveying away brandy, arrack, rum, spirits, and strong waters, (customs and other duties not being first paid or secured,) and proceed to condemnation thereof, in the same manner as officers of the customs may do. s. 1.

If any goods shall be laden or taken in from the shore into any bark, hoy, barge, lighter, wherry, or boat to be carried aboard any vessel outward bound, or laden or taken in out of any ship coming in from foreign parts without a warrant and

presence

In what cases,
and of what
things seizure
may be made,
and by whom.

Spirituous
liquors.

Shipping or land-
ing goods with-
out warrant.

presence of an officer of the customs; such bark, &c. shall be forfeited; and the wharfinger offending shall forfeit 100l.; and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; 13 & 14 C. 2. c. 11. s. 7.

And if any carman, porter, waterman, or other person shall assist in the taking up, landing, shipping, or carrying away any such goods; such person being apprehended by warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under-treasurer, or barons of the exchequer; and for the second offence he may, by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5l. for the king's use, or until he shall be discharged by the lord treasurer, &c. of the exchequer. *Id.*

If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bonâ fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port, then not only all such certificate goods shall be forfeited, but also the person relanding the same or concerned therein or to whose hands they shall knowingly come or by whose privity they are relanded shall forfeit double amount of the drawback, together with the vessels, boats, horses, cattle, and carriages, used in landing, removing, or conveying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 Ann. c. 13. s. 16.

Goods relanded
after drawback.

But by a clause in 8 G. c. 18., the boats, cattle, and carriages, may be recovered before the justices of the peace (a).

By the 8 Ann. c. 7. If any goods shall be unshipped, with intention to be landed, (the duties not being first paid or secured,) or if any prohibited goods shall be imported, then not only the said goods shall be forfeited, but also the persons assisting or concerned in the unshipping, or to whose hands they shall knowingly come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle and carriages used in the landing and conveyance thereof; half to the king, and half to him that shall seize or sue. s. 17.

Unshipping with
intent to land.

(a) See *post*, under this head.

And by the 19 G. 3. c. 69. §. 8. Any officer of the customs or excise, and their assistants, may arrest persons who shall be found aiding in unshipping, to be laid on land, any uncustomed or prohibited goods; and shall forthwith carry them before a justice residing near; who shall, if he see cause, commit the offender to the next county gaol, there to remain without bail till the next general quarter sessions. In which case (by §. 11.) the officer conveying such offender before the justice, shall enter into recognizance in 40l. to appear and prosecute. And (§. 12.) the justices at such sessions shall hear and determine the offence, and in lieu of any other punishment imposed by any former act are authorized and required to commit the offender to hard labour in the house of correction, for a term not exceeding three years, nor less than one. And (§. 11.) the commissioners shall order the charges of prosecution to be paid by the receiver-general of the customs or excise respectively.

Power to search.

Any person authorized by writ of assistance out of the exchequer may take a constable or other public officer near, and in the day-time enter any house or place, and in case of resistance break open doors, chests, and other package there to seize, and from thence to bring any goods prohibited and uncustomed, and to secure them in the king's storehouse. 13 & 14 C. 2. c. 11. §. 5.

Officers of the customs empowered to seize tea and spirits.

And whereas the officers of excise are by several acts empowered to seize tea and spirits removing without permits, together with the vessels, boats, horses, and carriages used in removing thereof; it is enacted by 24 G. 3. c. 47. *sess.* 2. that the officers of the customs shall have the like powers to seize and prosecute any such tea or spirits so removed or removing. §. 29.

Goods passing may be stopped and seized.

If prohibited or customable goods shall be found by any officer of the customs in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water-side, without the presence of an officer; or if such goods shall, on information of a credible person, be found in any house or other place, on search made as by the said statute of 13 & 14 C. 2. c. 11., such officer may stop and put the said goods in the king's warehouse in the port next to such place, until the claimer shall make proof on oath before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for or condemned, or otherwise delivered as aforesaid; in which case, the

goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the customs of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing and prosecuting the same. 6 G. c. 21. §. 39.

Provided such proof be made within ten days after such stopping; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods is provided. §. 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and any question shall arise whether the duties were paid or secured, or the goods had been compounded for or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recover his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. §. 41.

Proof of Duties paid to lie on the claimer.

E. 12 G. 3. Salamon v. Gordon. Trespas for taking four boxes of plate glass; and, on Not Guilty pleaded, the cause came on to trial at *Guildhall* before *Blackstone J.* at the sittings after Hilary term. It appeared in evidence that the goods were seized in the open streets of *London* from the plaintiff's porters, who was carrying them from a warehouse where they had laid three months unto the plaintiff's house, in the passage to which they did not go near the water side; that the defendants were custom-house officers, and seized the goods about nine of the clock in the evening, under a suspicion of their not having paid the duties. The defendants admitted these facts; but insisted that under the statutes the *onus probandi* that these goods had paid duty lay upon the plaintiff, in default of which, the seizure was justifiable. The judge was of a different opinion, and thought the defendant in an action of trespass must shew the goods were forfeited; and the plaintiff recovered a verdict. It was moved for a new trial, and urged that the provisions in the statutes extended to all cases as well actions as prosecutions. On the other hand, it was insisted that they related not to actions of trespass but only to prosecutions in the exchequer: Of which opinion was the court; who said, the judge's direction was right; they relate to prosecutions only. It has been found necessary for the revenue to lay trader's under special restraints to prevent collusion and fraud. Before the statute of 6 G. if an officer went into a trader's house, and an action of trespass was

In criminal cases only (as to case of customs.)

brought against him; then, on proof of the trespass committed, unless the defendant could prove that the goods therein were forfeitable, he had a verdict against him. This stopped the collection of the public revenue. To remedy this the statute 6 G. was made; the preamble to *s.* 39. states the mischief; and the purport of the act is, that where an officer acts *bonâ fide*, he shall be protected. Violent presumption shall excuse him, though he mistakes, in these three cases, 1. where goods are on board a boat, &c., without any officer, 2. where they are coming from the waterside, 3. on credible information. In these cases, the owner may apply to the commissioners; who, if the circumstances are proper, will restore the goods. If no application be made, but the officer is driven to a prosecution for condemnation; the *onus probandi*, that the goods are not forfeitable, lies on the claimer in such prosecution. "Such" prosecution, in *s.* 41. relate to the prosecution for condemnation in *s.* 40. The proof is to lie on the claimer, and not the prosecutor. Not the least idea of a plaintiff in a civil action throughout the whole. The different statutes speak only of cases of prosecutions to condemn. Here is a seizure for goods in the street, not upon information, nor coming from the waterside. Trespass is brought for this wrong; and now the plaintiff is called upon to shew that he has paid the duties. If this were allowable, a custom-house officer might enter into any man's house (within the year allowed in such cases) and seize any foreign goods, books, silks, laces, or any thing liable to the customs, and put the owner upon proof that the duties have been paid. And the rule for a new trial was discharged. 2 *Black. Rep.* 813.

When the seizer
shall be liable
to an action.

Where the claimer shall make proof, either by oath before a justice or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner or claimer shall receive any damages by such stop, he shall receive his goods and he may bring his action for his reasonable damages. *s.* 42.

But the officer, who shall stop the goods may, if he please, seize and prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery or the value of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *s.* 43.

Goods taken in
at sea.

If any foreign goods shall by any ship or boat be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the

person

person having charge of such ship so taking in, shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive,) the same shall be forfeited, and the person having such charge, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken shall be forfeited, if it exceed not 100 tons; and the person having the charge of the vessel out of which they are taken shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 G. 2. c. 35. s. 23.

Where any vessel coming from foreign parts, having on board 20lbs. weight of coffee, or any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shall give notice to or make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port; all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle, furniture, and apparel shall be forfeited, provided such vessel doth not exceed the burden of 50 tons; (and by 3 G. 3. c. 22, and the 5 G. 3. c. 43. s. 38. half the produce, after the sale thereof (charges deducted), to be to the king, and half to the officer who shall make the seizure.) 5 G. 3. c. 43. s. 38.

Vessels hovering
near the coast.

And by 24 G. 3. c. 47. s. 2. If any vessel shall be found at anchor, or hovering within the limits of any port; or within four leagues of the coast or shall be discovered so to have been, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity (of which the person in charge shall give notice and make proof to the proper officer), having on board any brandy or other spirituous liquors, in any vessel or cask not containing 60 gallons at least (except only for the use of the seamen not exceeding two gallons for each), or having on board any wine in casks (provided such ship having wine on board shall not exceed 60 tons burden), or having on board 6lb. weight of tea, or 20lb. weight of coffee, or any goods whatever liable to forfeiture, not only all such goods but also the ship with all her guns, &c. and tackle shall be forfeited. s. 1.

Provided, that in any suit for forfeiture, evidence may be received to shew, from the small quantity of goods, and other circumstances, that they were on board without the privity of

of the owner or master, or other person in charge; and on proof thereof, and that there was no want of reasonable care, such vessel shall not be forfeited, if of more than 100 tons burden. *f. 2.*

But the goods so found on board, whether with or without the privity of the master, shall be forfeited; and the person in whose charge or possession they shall be found shall forfeit treble value. *f. 3.*

And if any vessel having on board any brandy or other spirituous liquors in any cask not containing 60 gallons at the least (except for the use of the seamen not exceeding two gallons each), or having on board any wine in casks (provided such vessel having wine on board shall not exceed 60 tons burden), or having on board 6lb. of tea, or 20lb. of coffee, or any tobacco or snuff, which, taken together or separately, shall exceed one hundred weight; or any goods whatsoever liable to forfeiture; shall be found at anchor, or hovering or to have been within the distance herein set forth (that is to say,) within a supposed straight line from *Walney Island in Lancashire*, to *Great Ormshead in Denbighshire*; or from *Burdsey Island in Carnarvonshire*, to *Strumble Head in Pembrokeshire*; or from *The Lizard in Cornwall*, to *The Prall in Devonshire*; or from *The Prall* aforesaid to *The Bill of Portland in Dorsetshire*; or from *Cromer in Norfolk* to the *Spurn Head in Yorkshire*; or from *Flamborough Head in Yorkshire*, to *The Staples in Northumberland*; or from *The Mull of Galloway in Scotland*, to the point of *Ayre in the Isle of Man*; such vessel not proceeding on her voyage (wind and weather permitting,) unless in case of unavoidable necessity (of which notice and proof shall be immediately given by the person in charge of the vessel to the officers of the customs;) then not only all such goods but also such vessel with her guns, tackle, and furniture shall be forfeited. 34 G. 3. c. 50. *f. 8.*

Of the built of
vessels,

And all vessels, belonging in whole or in part to any of his majesty's subjects, called *cutters*, *huggers*, *shallops*, or *wherries*, (of what built soever,) or of any other description, whose bottoms are clench work, unless they shall be square rigged, or fitted as sloops, with standing bowsprits; and all vessels the length of which shall be greater than in the proportion of $3\frac{1}{2}$ feet to one foot in breadth [except vessels employed in the pilchard fishery duly licensed 25 G. 3. c. 58. *f. 4.*]; and all ships belonging as aforesaid armed for resistance [and by 27 G. 3. c. 32. *f. 1.* *cutters*, *luggers*, *shallops*, *wherries*, *sloops*, *smacks*, or *yawls*, having a bowsprit which shall exceed in length more than two thirds of the length of such cutter, &c. from the forepart of her stem, to the aft side of the stern post aloft, whether the same shall be a standing

or running bowsprit, [which shall be found within the limits or distance aforesaid, shall be forfeited, together with the goods, if any, laden thereon, [this only applies to the 24 G. 3.], and all her guns, tackle, and furniture. 24 G. 3. c. 47. *sess.* 2. *f.* 4.

By 34 G. 3. c. 50. The same is further extended to *cutters, luggers, shallops, wherries, smacks, or yawls*, belonging in whole or in part to any of his majesty's subjects, of the built therein particularly described [and by 35 G. 3. c. 31. *f.* 1. the same shall extend to all such vessels of what built soever they may be], which shall be found to have been within the distance aforesaid or hereinafter specified, shall be forfeited together with the goods laden thereon, and all her guns, tackle, and furniture. *f.* 7.

And in case any open boat which shall be built for rowing or sailing, or rowing and sailing, belonging in whole or in part to any of his majesty's subjects, and being of the length of 14 and under 18 feet, and the depth of which is greater than in the proportion of $1\frac{1}{4}$ inches to every foot in length, shall be found within the distance aforesaid, or upon land, the same shall be forfeited, and may be seized by any officer of excise or customs; unless such boat shall have plank of three-fourths of an inch thick, and her timbers $1\frac{1}{2}$ inches square, and not more than nine inches distant from timber to timber; and if any such boat by this act declared to be forfeited shall be found on board, or shall belong to any cutter, lugger, shallop, wherry, smack, or yawl, such cutter, &c. shall also be forfeited, and may be seized by any officer of excise or customs. *f.* 9.

Of the built of
boats.

But nothing in this act shall extend to *whale boats* belonging to any vessel employed in the whale fisheries, and after the return of such vessel, laid up out of use. *f.* 10.

By 28 G. 3. c. 34. If any open boat, belonging in whole or in part to any of his majesty's subjects, and being of the length of 23 feet and upwards, built and constructed for rowing or sailing, or rowing and sailing, the length whereof is greater than in proportion of $3\frac{1}{4}$ feet to one foot in breadth, be found within four leagues of the land, or upon land in *Great Britain*; or being of the length of 18 feet and under 24 feet, and the depth of which shall be greater than in the proportion of $1\frac{1}{4}$ inches to every foot in length, it shall be forfeited, and may be seized by any officer of excise or customs, together with the ship or vessel to which such boat belongs. *f.* 10.

And all open boats belonging as aforesaid of 24 feet and upwards, the depth of which shall be greater than in the proportion of one inch to one foot in length, may be seized as aforesaid. *f.* 11.

But

But nothing herein shall extend to boats belonging to or employed in the service of the navy, victualling, ordnance, customs, excise, or post-office, or used on any canal or inland navigation; or boats duly licensed the licence being actually on board at the time of detention; or boats built of timber and planks of certain dimensions, particularly set forth in the act. *f. 12.*

By the 52 G. 3. c. 141. *f. 1.* reciting that whereas by 8 G. 1. c. 18. it was enacted, that if any boat, wherry, pinnace, barge, or galley, rowing or made or built to row with more than four oars (not belonging to his majesty or any of the royal family, or not being a long boat, barge, or pinnace, belonging to or used in the service of any merchant ship or vessel,) shall be found upon the water, or in any place within the counties of *Middlesex, Surrey, Kent, or Essex*, or in the river of *Thames*, either above or below *London Bridge*, or within the limits of the ports of *London, Sandwich, or Ipswich*, without a licence as therein directed, such boat, wherry, pinnace, barge, or galley, with all her tackle and furniture, or the value thereof, should be forfeited, and the owner or owners thereof, or any person using or rowing the same, should also forfeit and lose the sum of forty pounds: and that whereas by 19 G. 3. c. 19. the said in part recited act, and the several clauses, penalties, and forfeitures and restrictions therein contained (not altered by that act) were extended to all boats, wherries, pinnaces, barges, or galleys whatever, rowing or made or built to row with more than six oars, which should be found either upon the land or water, within any harbour, port, or place whatever, in any other part of *Great Britain*, or within two leagues of the coast thereof; but it was nevertheless provided, that nothing therein contained should extend or be construed to extend to boats commonly called *Tow Boats* (used in the towing ships or vessels), belonging to licensed pilots within the port and jurisdiction of the city of *Bristol*: and whereas by the 47 G. 3. c. 66. boats belonging in the whole or in part to his majesty's subjects, or whereof one half of the persons on board are subjects of his majesty, being rowed with, or constructed to row with more than six oars, (except boats employed in the whale fisheries, or belonging to merchant ships or vessels exceeding the burthen of two hundred and fifty tons, or life boats, or boats employed solely in rivers or inland navigations), found within the limits of any port in the united kingdom, or in any part of the *British* or *Irish* channels, or elsewhere on the high seas, within one hundred leagues of any of the coasts of *Great Britain*, are subject to forfeiture, with all her furniture, tackle, and apparel, unless such boats are licensed by the commissioners of his majesty's customs, to use more than

fix oars ; and that it was expedient in order to check and suppress the illegal transactions carried on upon the coasts of *Great Britain* by row boats, further to require the owners of boats rowing with more than four oars, to take out licences in certain cases, for using or navigating such boats, from the said commissioners of his majesty's customs, as the case may be, and to provide that no licences for boats rowing with more than six oars shall in future be granted, except as herein mentioned : it was enacted, that if any boat, wherry, pinnace, barge, or galley, being rowed with, or made or built or constructed to row with more than four oars, belonging in the whole or in part to his majesty's subjects, or whereof one half of the persons on board are subjects of his majesty, should be found within the limits of any port of *G. B.*, or in any part of the *British* or *Irish* channels, or elsewhere on the high seas within one hundred leagues of the coast of *Great Britain*, or should be discovered to have been within the said limits or distance, the owner of which should not have obtained a licence for using or navigating such boat, &c., from the commissioners of customs, or from the admiralty, prior to the said 47 G. 3. every such boat, &c. with her tackle and furniture, should be forfeited, and be seized by any officer of the army, navy, or marines, or of the customs or excise : provided always, that nothing therein-before contained should extend to any boat, wherry, pinnace, barge, or galley, belonging to his majesty or any of the royal family, or in the service of government, or in the employment of the customs or excise, or to any long boat, yawl, pinnace, or other boat belonging to any square rigged ship or vessel employed in the merchant service, or to any other merchant ship or vessel exceeding the burthen of 150 tons, not otherwise requiring a licence for the use thereof, or to any boat employed in the whale fisheries, or to any life boat or any tow boat used in the towing ships or vessels belonging to licensed pilots within the port and jurisdiction of the city of *Bristol*, or to any boat, &c. employed solely in rivers or inland navigation.

And by *s. 2.* every licence which might be granted by the said commissioners for any boat, &c. rowing with six oars or otherwise, requiring licence, should contain the proper description thereof, the names of the owners, together with their places of abode, and in what manner intended to be employed, together with any other particulars which might be required by the said commissioners respectively, to be described and inserted in such manner as they might respectively think proper to require and direct ; and the owners thereof should also give security by bond to his majesty, in double the value of such boat, &c. agreeably to the 46 G. 3. c. 137. on
failure

failure whereof the license should be void and of no force or effect; and such boat, &c. should be liable to seizure and prosecution in the same manner as if no such license had been granted for the same.

No licence shall be granted by the commissioners, for any boat whatever made to row with more than six oars; and if any such boat belonging in the whole or in part to his majesty's subjects, or whereof one half of the persons on board are subjects of his majesty, shall be found within the limits of any port in *Great Britain*, or in any part of the *British* or *Irish* Channels, or elsewhere on the high seas within 100 leagues of any part of the coast of *Great Britain* or *Ireland*, such boat not having been licensed previous to the passing of this act shall be forfeited, and shall be seized by any officer of the army, navy, or marines, or of the customs or excise; and every such officer may arrest and detain every person being a seaman or sea-faring man found on board any such boat (not being a passenger on board), and convey him to any ship or vessel in his majesty's service, or to the custody of any officer employed in his majesty's impress service; and any person being such seaman or sea-faring man may thereupon, if fit and able to serve his majesty, be impressed into his majesty's naval service, and shall continue to serve therein under the regulations mentioned in the said 47 G. 3.; and it shall be lawful for the said commissioners to direct the officer by whom the persons so found on board any such boat shall have been detained, to be paid any sum not less than 5*l.*, and not exceeding 20*l.*, for each man so detained and impressed: Provided, that nothing herein-before contained, as to boats rowing with more than six oars, shall extend or be construed to extend to any boat commonly called a *tow boat*, used in the towing ships and vessels belonging to licensed pilots within the port and jurisdiction of the city of *Bristol*, or to any boats employed in the service of the *East India* company, or to any custom or excise boat, or belonging to his majesty, or to any of the royal family, or to any life boat, or any boat used solely in rivers or inland navigation, or to any square-rigged ship or vessel employed in the merchants service, or to any other merchants ship or vessel exceeding the burthen of 150 tons. *f. 3.*

And by *f. 4.* Whenever any licensed boat of any description whatever, (not belonging to any ship or vessel, and being under the burthen of 15 tons), shall be lost, broken up, captured, burnt, seized, and condemned, sold, or otherwise disposed of, the licence which shall have been granted for the same shall be delivered up to the collector of the customs at the port to which such boat shall belong, within

six weeks from the time such boat shall be so lost, &c.; or in case of the said licence being lost or taken by the enemy, satisfactory proof thereof on oath shall be within the same period made before the collector or controller of such port; and in case such licence shall not be produced and so delivered up, and no such proof shall be made within such period as aforesaid, the owner or owners of such boat shall forfeit and lose 30*l*.

Whenever any licensed ship or vessel exceeding fifteen tons burthen shall be lost, broken up, &c. the licence which shall have been granted for the same shall, in case the ship or vessel was licensed for the coasting or fishing trade only, be delivered up to the collector of the customs at the port to which such ship or vessel shall belong, within the period of two months from the time such ship or vessel shall be so disposed of; or in case the ship or vessel was licensed for trading to parts beyond the seas, then the said licence shall be delivered up to the collector of the customs at the port to which such ship or vessel shall belong, within the period of one calendar month from the time when the loss, &c. shall come to the knowledge of the owner thereof; or in case the licence shall have been lost, or taken by the enemy, satisfactory proof thereof on oath shall be made within the same periods respectively, before the collector and controller of such port; and in case the licence shall not be produced, and so delivered up, and no such proof shall be made within the said periods respectively, the owners, and also the master shall forfeit and lose 50*l*. if of the burthen of 15 tons, and under the burthen of 150 tons or upwards. *f*. 5.

If the owner or master of any licensed ship, vessel, or boat, lost, or otherwise disposed of, shall, prior to or after such disposal of the ship, knowingly use the licence granted for the same, in order to protect from seizure and prosecution any other ship, or if the owner or master of any ship, &c. licensed by the commissioners, shall use such licence for any other ship, &c., than that for which the same was granted, such owner, and also the master knowing thereof, shall forfeit 200*l*. *f*. 6.

The commissioners of customs may, whenever it may appear expedient so to do, purchase any boat, rowing or made or built to row with more than six oars, which may have been licensed previous to the passing of this act; and the owner of every such boat, &c. shall sell and dispose of his interest therein to the said commissioners, at a fair valuation, to be ascertained by the oaths of two disinterested and indifferent persons skilled in the value of small vessels, or craft of the like description, one of such persons to be nominated by the

the said commissioners, and the other by the owner ; and in case of disagreement as to the value, the persons so nominated shall call in a third disinterested and indifferent person ; such two persons and such third person to be paid any sum which may be reasonable by the owner, and by the said commissioners, in equal moieties, and the determination as to the value of any two such persons, or of such third person so called in, shall be binding and conclusive upon all parties ; and after payment being made to the owner of the sum so ascertained to be the value, the property shall vest in his majesty ; and the owner shall deliver such boat, &c. to any officer of the customs appointed to receive the same by the order and direction of the said commissioners ; or in case of refusal on the part of such owner to receive the amount of the purchase money, such boat, &c. shall be seized by any such officer as the property of his majesty. *f. 7.*

After the said commissioners shall have obtained possession of any such boat, &c. they may use and employ the same in the service of the revenue, or cause the same to be broken up, and the materials sold, according as in their judgment it may appear to be the most conducive to the public service. *f. 8.*

In case any open boat belonging in the whole or in part to any of his majesty's subjects, or whereof one-half of the persons on board are subjects of his majesty, and being of the length of thirty feet and upwards, built or constructed for rowing or sailing, or for rowing and sailing, the length of which shall be greater than in the proportion of one foot for every two inches of the width or breadth of such boat, to be measured by a straight line from the forepart of the stem to the aft side of the transom or stern-post aloft, shall be found within the limits of any of the ports of *Great Britain*, or in any part of the *British* or *Irish* Channels, or on the high seas, within 100 leagues of the coast of *Great Britain* or *Ireland*, such boat shall be forfeited, and shall be seized by any officer of the army, navy, or marines, or of the customs or excise, unless such boat, being a clench-built boat, shall have plank of not less than half an inch thick, and timbers of the following dimensions ; that is to say, for every boat exceeding the length of 30 feet, and being under the length of 35 feet, timbers of not less than one inch and a quarter square ; for every boat of the length of 35 feet, and under the length of 40 feet, timbers of not less than one inch and three-eighths of an inch square ; for every boat of the length of 40 feet, and being under the length of 45 feet, timbers of not less than one inch and a-half square ; for every boat of the length of 45 feet, and being under the

length of 50 feet, timbers of not less than one inch and three-quarters square; and for every boat of the length of 50 feet and upwards, timbers of not less than two inches square, such timbers respectively not being more than 10 inches apart: provided that nothing herein-before contained as to boats of the length of 30 feet and upwards shall extend or be construed to extend to boats belonging to ships or vessels exceeding the burthen of 150 tons, provided such boats are licensed by the said commissioners respectively, nor to life-boats, nor to boats employed in the whale fisheries, nor to the boats belonging to any square-rigged ship or vessel employed in the merchants service, or to any other merchant ship or vessel exceeding the burthen of one hundred and fifty tons, or used solely in rivers or inland navigation, or employed in the service of government, or to extend to any boat which may have been licensed by the lord high admiral of *Great Britain*, or lords commissioners of the admiralty, prior to the 47 G. 3. c. 66., or by the commissioners of the customs prior to the passing of this act: Provided always, that nothing herein-before enacted or required respecting the length, width, or plank or timbers of boats, shall extend or be construed to extend to affect boats belonging to ships or vessels returning from the first voyage to foreign parts, upon which first voyage they shall have left *Great Britain* before or within fourteen days after the passing of this act, provided the owners or masters of such ships or vessels shall duly take out a licence from the said commissioners of customs for each such boat, within one calendar month after the returning into port of each such ship or vessel from such first voyage. *f. 9.*

All boats seized under this act, and all penalties and forfeitures whatever in this act mentioned, may and shall be managed, kept, detained, proceeded against, sued for, prosecuted, condemned, distributed, recovered, and applied in *England* or *Scotland* respectively, according to the laws now in force relating to his majesty's revenue of customs in *Great Britain*, in so far as the same are or can be made applicable, and are not by this act altered or varied. *f. 10.*

And by 34 G. 3. c. 50. if any cutter, lugger, shallop, wherry, smack, yawl, or boat, belonging as aforesaid, shall be found to have been within the distance by this act specified as aforesaid, which shall have on board any arms or ammunition, except duly licensed, the same shall be forfeited, together with the goods, if any, and the guns, tackle, and furniture, which may be seized by any officer of excise or customs. *f. 11.*

Arms and ammunition of such vessels.

Provided, that nothing herein shall extend to any vessel on a voyage from *America*, or the *East* or *West Indies*, *Africa*,

or the *Mediterranean*, so as to subject the same to forfeiture for having spirits, tea, coffee, tobacco, or snuff on board; nor to vessels employed in his majesty's service; or used solely on rivers, canals, or inland navigation; or duly licensed, as directed by the said act of 24 G. 3., and having such licence actually on board at the time of detention; nor to vessels having arms or ammunition on board regularly entered and cleared; and regularly stowed; nor to vessels wholly and solely employed in the fisheries, having sufficient hooks or nets on board proper for carrying on the same. *Id.*

All seizures and forfeitures by this act are to be recovered and applied as is directed by the said act of 24 G. 3. c. 47. 34 G. 3. c. 50 f. 12.

Forfeiture of
such ship having
prohibited goods
on board.

And by the 19 G. 3. c. 69. When any tea, coffee, foreign spirituous liquors, or any goods whatsoever, are liable to forfeiture for being found on board any ship or vessel coming from foreign parts, at anchor, or hovering within the limits of any port, or within two leagues of the coast, or for having been discovered to have been within the limits of any port, contrary to any act of parliament at the time of this act in force; the ship, &c. if coming from any part of Europe, together with her guns, tackle, and furniture, shall be forfeited, provided such ship doth not exceed 200 tons. f. 2.

And any officer of the customs or excise (producing his warrant of deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him, he shall forfeit 100l. 9 G. 2. c. 35. f. 29.

Importing n
casks under size.

Where any foreign spirituous liquors shall be imported from any part of *Europe* in any vessel not containing 60 gallons at the least (except only for the use of the seamen, not exceeding two gallons each,) the same, and also the ship of whatever burden with all her guns, tackle, and furniture shall be forfeited. 19 G. 3. c. 69. f. 1.

Strength of spi-
rits imported.

And no foreign spirits shall be imported stronger than one to nine over hydrometer proof (except from the sugar plantations) on forfeiture thereof, with the casks and package, which may be seized by any officer of excise or customs. 26 G. 3. c. 73. f. 60.

Penalty on the
master, mate, or
seamen.

Where the officers of customs or excise shall find on board any ship or vessel coming from foreign parts within the limits of any port of this kingdom, more than 100lbs. of tea (not being an East India Company's ship), or more than 100 gallons of foreign brandy or other foreign spirituous liquors (over and above two gallons for every seaman), and being in casks under 60 gallons; the master, or other person taking charge of the ship, shall forfeit 300l. And the said

officers

officers or their assistants may arrest such master or other person, and carry him before a justice residing near, who shall before such justice enter into a recognizance of 300l. [with one sufficient surety, 26 G. 3. c. 77. s. 9.] to appear in the court of exchequer within the first four days of the term next the arrest to any information which may be exhibited against him; and the justice shall transmit the recognizance to the King's remembrancer in the said court. And if such person shall refuse to enter into such recognizance, the justice shall commit him to the next county gaol till he shall enter into such recognizance. 19 G. 3. c. 69. s. 7.

By the 21 G. 3. c. 39. If the master shall conceal or suffer to be concealed by his mate or seamen, any quantity of foreign spirituous liquors above two gallons for each seaman, or tea above six pounds, or coffee above nineteen pounds; or clandestinely import, or suffer to be imported, any such foreign spirituous liquors, or any other uncustomed goods whatsoever, whereby the owner of the vessel becomes liable to any penalties, or the vessel is liable to be forfeited; the master shall not only forfeit to the owner all his wages, but also treble value of such spirituous liquors, tea, coffee, or other uncustomed goods, over and above the penalties to which the master shall be liable by any law at the time of this act in force; to be recovered of such master by the owner, to his own use. s. 1.

Masters conceal-
ing or importing
clandestinely
spirituous li-
quors.

And if the mates or seamen shall conceal or import any of the said goods, above the quantities so allowed as aforesaid, they shall forfeit to the owner their wages, and also 10s. for every gallon of spirituous liquors, and 10s. for every pound of tea or coffee; and if it be in time of war, the owner may send them for three years to serve on board any of his majesty's ships, unless they be old, disabled, or otherwise unfit. If it be in time of peace, and they shall not pay, and also if such person disabled shall not pay, on conviction, one justice may commit them to gaol for three months, or not less than six weeks. s. 2, 3. 5.

Mates or sea-
men.

Provided, that the justices may mitigate the penalties under this act, so as not to remit above one moiety: and the power of certiorari, is taken away by this act, as to orders and proceedings of justices under it, and all suits and prosecutions under it must be in six months. s. 6, 7, 8.

And a printed copy of this act shall be put up and continued on some conspicuous part of every British trading vessel; on pain of the master forfeiting to the owner 1s. a day for every omission, to be recovered by warrant under the hand and seal of one or more justices. [But no power is given to levy the same by distress.] s. 4.

Persons lurking
within five miles
of the coast.

On oath made before a justice that any person is lurking, waiting, or loitering, within five miles from the sea coast or any navigable river, and that there is reason to suspect that he waits with intent to be aiding in running, landing, or carrying away prohibited or uncustomed goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not to be concerned in or aiding in any clandestine or unlawful business, and is not at such place with such intent he shall be committed to the house of correction, to be whipped and kept to hard labour not exceeding one month; and the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20s. for each offender. 9 G. 2. c. 35. s. 18.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but shall be committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. s. 19.

Buying or re-
ceiving run
goods.

If any person shall knowingly receive or buy any run goods, before they shall have been legally condemned, he shall on conviction (after summons) by confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20l., half to the informer and half to the poor; to be levied by distress; for want of distress, to be committed to prison for three months. 8 G. c. 18. s. 10. continued by 43 G. 3. c. 29. s. 9. to the end of the next session after 29 Sept. 1809, and now perpetual by 49 G. 3. c. 20. s. 4.

Concealing run
goods.

And by the 11 G. c. 30. If any person shall knowingly harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs or excise; he shall (whether he claim any property in them or not) forfeit the same, and treble value. The price to be estimated at the rate the best goods of the kind shall at such time bear in London. s. 16, 17.

Offering to sale
run goods.

If any person shall offer to sale any prohibited goods, or which have been or are by him pretended to have been run; the same, together with the package, shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise. Provided that if the seizure be within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, after seizure, they be put into the king's warehouse near the place of seizure; and if it be far from any such warehouse, then in some excise office near. s. 18.

And

And the person offering or exposing them to sale shall also forfeit treble value. *f. 19.*

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *f. 20.*

The buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whichever of them shall be first prosecuted by the other, the other shall be discharged; but if prosecution shall not be commenced in a month, the warehousekeeper may prosecute. *f. 21.*

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *f. 39.*

All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted (A, B, C.) thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress (D) by warrant of such justice, and for want of distress to be committed (E) to the house of correction, to be whipped and kept to hard labour not exceeding three months. *9 G. 2. c. 35. f. 21.*

Porter carrying run goods.

By the *8 G. c. 18.* (continued, *vide ante.*) Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be deemed runners of foreign goods within this act and on conviction, guilty of felony, and transported for seven years. *f. 6.*

Persons armed or disguised, and being 5 in number, and within 20 miles of the coast, resisting the officers.

But if any such runner shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted: he shall have a reward of 40*l.* for every offender convicted if the value of the run goods exceed 50*l.*, and he shall be acquitted. *f. 7.*

And any other person discovering any one offender in three months, so as he be convicted, shall have in like manner 40*l.* for every such offender, over and above what he may be entitled to on account of the said run goods, so as the value of the run goods exceeds 150*l.* *f. 8.*

By the *9 G. 2. c. 35.* Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirits, brandy, or other liquors exceeding five gallons, not having paid the duties, and not

Being two in number and having cart and horses, within 5 miles of the coast or navigable river.

having a permit, or any other foreign goods of above 30*l.* value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 G. c. 18. although no proof shall be made that such goods were run, or had not been entered and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons; and every person convicted of any such offence shall be guilty of felony, and transported for seven years. *f.* 13.

And all the goods so found, and all weapons, and arms, and all the furniture of their and every of their horse and horses, cattle and carriages, and the chests, and other package, shall be forfeited. *f.* 14.

Officer or other
person wounded.

And if any officer of the customs or excise shall lose any limb or an eye, or be otherwise maimed or dangerously wounded by any offender last mentioned, in apprehending or endeavouring to apprehend him, or making pursuit after such offender, he shall on the conviction of such offender have a reward of 50*l.* over and above any other reward he may be entitled to by this act.

Or killed.

And if any person be killed in apprehending or endeavouring to apprehend, or in making pursuit after such offender, his executors or administrators (on certificate under hand and seal of the justice of assize for the county where the fact was done, or the two next justices of the peace, of such person being so killed) shall have 50*l.* over and above any other reward they may be entitled to by this act. *f.* 15.

Informers.

If any person shall in three months after such last mentioned offence committed, discover to the commissioners of the customs or excise any offender so as he be convicted; he shall have 50*l.* for every such offender over and above any other reward he may be entitled to by any law at the time of this act passed, in being. *f.* 16.

And the commissioners of the customs and excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed; and if any dispute shall arise between the persons entitled to the reward, the same shall be adjudged by the commissioners. *f.* 17.

To the number
of two or more,
passing with

By the 19 G. 3. c. 69. If any persons to the number of two or more shall be found passing with any horse, cart;

or carriage, whereon shall be laden more than six pounds weight of tea, or foreign spirituous liquors exceeding five gallons, not having paid the duty, and not having a permit; and shall carry any offensive arms, or wear any disguise, when passing with such tea or spirituous liquors, any officer of the customs or excise, and all other persons acting in their aid, may arrest such persons, and carry them before a justice, who (if he see cause) shall commit them to the next county gaol, till the next general quarter sessions. And in such case, the officer who conveys any such offender before the justice shall enter into recognizance in 40*l.* to appear and prosecute. And the commissioners shall order the charges of prosecution to be paid by the receiver general of the customs and excise respectively. And the justices at such sessions shall hear and determine the offence, and if the person committed be convicted, they shall in lieu of any other punishment by any former act commit him to hard labour in the house of correction for a term not exceeding three years nor less than one. *f. 9. 11, 12.*

horse and carriage, and disguised.

And upon information on oath before a justice of the peace that any persons to the number of three or more are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons, he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons; and he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law; and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. *9 G. 2. c. 35. f. 10.*

Apprehending riotous smugglers.

The apprehender of every such person convicted shall have for every such offender convicted a reward of 50*l.* immediately after conviction and demand made, tendering a certificate under the hand of the judge certifying the conviction, and that he was taken by the person claiming the reward. *f. 11.*

If any person shall lose a limb, or an eye, or be maimed, or dangerously wounded in apprehending or endeavouring to apprehend or in pursuing such offender, he shall on such conviction have a reward of 50*l.* over and above any other reward that he shall be entitled to by this act. *Id.*

Persons maimed in apprehending them.

If any person shall be killed in taking or endeavouring to take, or in pursuing such offender; his executors or administrators (on certificate under the hand and seal of the justice

Persons killed in apprehending them.

of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50*l.* over and above any other reward they may be entitled to by this act. *Id.*

Offender discovering his accomplices.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices to the commissioners of the customs or excise, so as two at least may be convicted, he shall have 50*l.* for every person so convicted; and be discharged of his offence. *s.* 12.

The said rewards to be paid as in the last section.

Outlawed smugglers.

By the 19 *G. 2. c. 34.* If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the illegal exportation of goods prohibited to be exported, or in running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay duties which have not been paid or secured, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any revenue officer in seizing or securing such goods, or shall maim or dangerously wound any such officer attempting to go on board any vessel within the limits of any part of this kingdom, or shoot at, maim, or dangerously wound him when on board, and in due execution of his duty; he shall be guilty of felony without benefit of clergy. *s.* 1.

See 52 *G. 3. c. 143.* at the end of sect. 3.

Mode of apprehension.

And persons charged with any the said offences before a justice of the peace, by information on oath of one or more credible persons by him or them to be subscribed, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council, who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette to the lord chief justice or any other of the justices of the King's Bench or to some justice of the peace, who shall upon such offender surrendering himself commit him to gaol, to answer the charge against him according to due course of law; which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff of the county where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon in the market places, on the market days of two

markets.

market towns in the same county, near the place where the offence was committed; and a copy of the order, shall be affixed on some public place in the said towns: And if such offender shall not surrender pursuant to such order, or if he shall escape after surrender, he shall from the day appointed for his surrender be taken to be convicted and attainted of felony without benefit of clergy. *f. 2. 24 G. 3. c. 47. sess. 2. f. 12.* See 52 G. 3. c. 143. *Pest, end of D. III.*

And if any person after the time appointed for surrender shall knowingly harbour, receive, conceal, aid, abet, or succour such offender, he shall, on prosecution within one year and conviction thereof, be guilty of felony, and transported for seven years. 19 G. 2. c. 34. *f. 3.* 24 G. 3. c. 47. *sess. 2. f. 13.*

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendering, and cause him to be brought before a judge of the King's Bench or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*,) shall receive 500*l.* for every such person so apprehended, in one month after execution awarded, from the commissioners of the customs or excise respectively: And if any offender, against whom no such order of council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all such his own offences for which no prosecution is then commenced, and shall also have his share of the reward: And if any person shall lose a limb or an eye, or be otherwise grievously maimed or wounded in apprehending or pursuing such offender, he shall receive 50*l.* over and above such other reward as he may have as apprehender by this act: And if any person shall be killed in apprehending or pursuing, his executors or administrators shall receive 100*l.* 19 G. 2. c. 34. *f. 10.*

Rewards for apprehending.

Nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by course of law. *f. 4. 24 G. 3. c. 47. sess. 2. f. 14.*

And if any offender, before such order for his surrender, shall discover two or more accomplices so as they be convicted, he shall receive 50*l.* for each, and be discharged of all such his own offences, for which no prosecution shall be then commenced. 19 G. 2. c. 34. *f. 11.*

In the case of *John Harvey*, E. 20 G. 2. The attorney-general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might

might be awarded according to the said act. The defendant traversed all the facts contained in the suggestion. On which; at another day, the attorney-general went into the proof of the several issues.—The several facts touching the laying the information before the justice (Mr. *Burdus*) against the prisoner and others; his certifying it in due manner to the duke of *Newcastle*, secretary of state; the duke's laying it before the king in council; the order of council (which was produced under the seal of the council) requiring the prisoner and others to surrender within 40 days after publication in the *London Gazette*; the transmitting this order to the printer of the *Gazette*; the publication of it in due time in two successive *Gazettes*; and the transmitting it to the sheriff of the county of *Suffolk*, in order to its being proclaimed and published as the act directeth,—were well proved. Then the under-sheriff of *Suffolk* and other witnesses were called to prove the proclaiming and fixing up the order in two market towns near *Benacre*, the place where the fact is charged in the information taken by Mr. *Burdus* to have been committed: And it appeared on their evidence that it was proclaimed and fixed up at *Ipswich*, which is 30 miles from *Benacre*; at *Hadleigh*, which is 42 miles from *Benacre*; and at *Lowestoffe*, which is 5 miles from *Benacre*; and at no other places: and that there are five or six market towns nearer to *Benacre* than *Ipswich*; particularly *Southwold* 5, and *Beccles* 8 miles.—Mr. *Ford*, assigned counsel for the prisoner, insisted that the act had not been complied with. The act indeed doth not say that it shall be in the *next* market towns, but still it must be in the market towns *near* the place. And the distance of 30 miles cannot with any propriety be called *near*, when it appeareth that there are at least three market towns within a third part of that distance.—And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence to give the sheriff a greater latitude than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not surely the most remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence *Hadleigh* and *Ipswich* are.—On the whole,

whole, the court, without summoning up the evidence, directed the jury to find for the king on all the issues, except those which regarded the proclamations in the market towns near *Benacre*; and on those to find for the prisoner, which they did. And then the court ordered the attorney-general to take nothing by his prayer; and that the prisoner should be remanded to *Newgate*, in order to answer for the original offence he stood charged with in the information taken by Mr. *Burdus*, if the attorney-general should think fit to indict him for it. *Fest. 51.*

Note: This act of the 19 G. 2. c. 34. was at first but temporary; and it having been doubted (4 *Black.* 155,) whether this part relating to the surrender upon proclamation were not expired, because the several acts which had continued the same from time to time did not continue the whole, but only so much thereof as related to the *punishment* of the offenders, and not to the extraordinary method of apprehending or causing them to surrender; therefore it was declared and enacted by the 19 G. 3. c. 69. that all and every the orders and directions relative to the surrender, proclaiming, apprehending, harbouring, and punishing offenders were continued and re-enacted by the said several acts of continuance, and might be lawfully exercised and used accordingly. *f. 23.*

And by the 28 G. 3. c. 23. so much of the said act of 19 G. 2. c. 34. (as relates to the further punishment of persons going armed, in defiance of the laws of customs or excise, &c.) is further continued till 29th *Sept.* 1795, and, by the 43 G. 3. c. 157, made perpetual.

Offences relating to the customs or excise, made felony by any act of parliament, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower, or forfeiture of lands. 19 G. 2. c. 34. *f. 5.* 43 G. 3. c. 157. *f. 2.*

Felonies may be tried in any county.

If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall hereafter within *Great Britain*, or within the limits of any port, harbour, or creek thereof, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal exportation of wool or other goods prohibited to be exported; or in the carrying of wool or other such goods in order to such exportation; or in the illegal running, landing, or carrying away prohibited or uncustomed goods, or goods liable to pay any duties which shall not have been paid or secured; or in the illegal relanding of any goods whatsoever, which shall have been shipped or exported upon

Punishment for assisting with arms in the illegal exportation of wool or other goods, or in exporting

upon debenture or certificate, or from any warehouse wherein such wool or other goods shall have been deposited under any act of parliament for the securing the home consumption duties thereon; or in rescuing or taking away any such wool or other goods as aforesaid after seizure from any officer of the customs or excise, or other officer authorized to seize the same, or other person employed by him or assisting him, or from the place where the same shall have been lodged by him; or in rescuing any person who shall have been apprehended for any of the offences made felony by any act relating to the revenues of customs or excise of *Great Britain*, or in preventing the apprehending any person who shall have been guilty of any such offence; or in case any persons, to the number of three or more, so armed as aforesaid, shall hereafter within *Great Britain*, or within the limits of any port, harbour, or creek thereof, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting; or if any person shall maliciously shoot at or upon any ship, vessel, or boat belonging to his majesty's navy, or in the service of the customs or excise, within the limits of any port, harbour, or creek of *Great Britain*, or within the *Isle of Man*, or within the limits of any port, harbour, or creek thereof, or in any port of the *British* or *Irish* channels, or on the high seas within one hundred leagues of the coast of *Great Britain* or *Ireland*; or if any person shall, either on shore or on the water, within the limits last aforesaid, maliciously shoot at, maim, or dangerously wound, any officer or officers of his majesty's army, navy, marines, militia, or volunteers, or any other his majesty's military or naval forces, or of the customs or excise, or any other person or persons aiding or assisting any such officer or officers when acting in the due execution of his or their duty under any of the powers, authorities, or provisions of any act relating to the revenues of customs or excise of *Great Britain*, or of any act for the prevention of smuggling; every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; and every such offence which shall be committed within any port, harbour, creek, haven, or roadstead, of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man* respectively, the same may and shall be enquired of, tried, and determined, in the said islands respectively; and every such offence committed elsewhere out of the united kingdom may and shall be enquired of, tried, and determined, in any county of the united kingdom; and every such offence committed within *England*,
Scotland,

Scotland, or *Ireland* respectively, may and shall be enquired of, tried, and determined, within such part of the said united kingdom in which such offence shall have been respectively committed, but in any county or shire of such part of the said united kingdom, in such manner and form as if the offence had been committed in the county or shire in which the same shall be enquired of, tried, and determined. 52 G. 3. c. 143. s. 11.

If any person shall be charged by information on oath before any justice of the peace, or other person competent to take such information in any part of the united kingdom, with being guilty of so assembling, aiding, or assisting, or of so maliciously shooting, maiming, or wounding as aforesaid, within the limits herein-before respectively specified, in any case wherein any such officer as aforesaid, or any person aiding or assisting any such officer in the execution of his duty as aforesaid, shall have been killed, such information shall be forthwith certified by the justice or other person taking the same under his hand and seal, to one of his majesty's principal secretaries of state, who shall forthwith lay the same before his majesty in his privy council; and his majesty may thereupon, if he shall so think fit, by his order in council, require and command the person so charged with such offence, that he do, within the space of sixty days, or such longer time as to his majesty shall seem fit, after the publication of such order in the *London Gazette*, surrender himself to the lord chief justice, or any other justice of the King's Bench, or to any justice of the peace, or other person competent to take such surrender as in such order shall be specified; and may further order and require such order to be proclaimed by the sheriff of the county where the offence shall have been committed, if committed within any county of the united kingdom, and if not committed within any such county, then by the sheriff of any county near to the place wherein the offence shall have been committed; and the clerks of his majesty's privy council shall cause such order to be forthwith printed and published in the *London Gazette*, and such publication to be repeated once in every week after such first publication, until the expiration of the said sixty days, or such other time as shall be appointed by such order for the surrender of such offender, and shall also cause a copy of such order, attested by the signature of one of the said clerks, to be transmitted to the sheriff of the county specified in such order, who shall, within fourteen days after the receipt of such copy, cause the same to be proclaimed between the hours of ten in the morning and two in

Proceedings in
cases of shooting,
or wounding, &c.

in the afternoon, in the respective market places, upon the respective market days of two market towns, in the same county, if there shall be two such towns; and if there shall be only one such town, then in such town, and in some other place of general resort within such county, and shall also cause a true copy of such copy of such order to be affixed upon some public place in each of such market towns or other place where such proclamation shall be made; and if the person charged with such offence as aforesaid, shall surrender himself according to such order, the justice or other person to whom he shall so surrender, shall commit him to some gaol or prison within the limits of his jurisdiction, to be there dealt with according to law; but if such person so charged and proclaimed as aforesaid, shall not so surrender himself within the time limited in such order, or shall after surrender and before trial for such offence escape from justice, such person shall, from the day appointed for such surrender, be adjudged to be a person attainted of felony, and shall suffer death as a felon, without benefit of clergy, if the offence shall be charged to have been committed in *England*, or within the limits of any port, harbour, or creek in *England* or *Ireland*, or within one hundred leagues of the coast thereof; and it shall be lawful for the court of King's Bench, or the justices of oyer or general gaol delivery, or great sessions for the county or place where such offender shall be, to award execution against such offender, in such manner as if he had been convicted and attainted in the said court of King's Bench, or before such justices of oyer and terminer, or general gaol delivery or great sessions respectively; and if the offence shall be charged to have been committed in *Scotland*, or within any port or harbour, or creek thereof, or within one hundred leagues of the coasts thereof, such offender shall in the like case be adjudged, deemed, and taken to be convicted of a capital crime, and shall suffer the pain of death, and confiscation of moveables, as in the case of a person found guilty of a capital crime and under sentence for the same; and it shall be lawful for the court of justiciary, or the lords of justiciary in their circuits in *Scotland*, to award execution against such offender, in such manner as if he had been found guilty and condemned in the said courts of justiciary or circuit courts respectively. 52 G. 3. c. 143. f. 12.

Obstructing officers in seizing prohibited goods.

If any person shall assault or obstruct any officer of the customs or excise in seizing uncustomed or prohibited goods; or shall rescue or cause to be rescued, or attempt the same; or, after seizure, shall destroy or damage any casks, vessels, boxes, or package wherein the same shall be contained; such officers,

officers, and all persons acting in their aid, may arrest the offender, and forthwith carry him before a justice near to the place where the offence shall be committed; and the justice shall, if he see cause, commit him till the next general quarter sessions, where if he shall be convicted, he shall in lieu of any other punishment under any other act for the same offence, be committed to the house of correction to hard labour, for a term not exceeding three years, nor less than one. 19 G. 3. c. 69. *f.* 10, 12.

And if any officer of the navy, customs, or excise shall be hindered, opposed, obstructed, or assaulted in the due execution of his office [or other person acting in his aid or assistance, 34 G. 3. c. 50. *f.* 5.] by any person whatsoever; the offender and all persons acting in his aid shall be carried before a neighbouring justice, who may commit him to gaol until the next general gaol delivery, or until delivered by due course of law; and in case an indictment shall be found against him or them, he or they shall plead thereto, without having time to plead thereto, as is usual in cases of misdemeanor; and upon conviction, shall be sentenced to hard labour on the river *Thames*, or other navigable river for any term not exceeding three years, according to provisions of 19 G. 3. c. 74., or such court may order commitment to the common gaol or house of correction for a term not exceeding three years. But if the offence fall within the provisions of 19 G. 3. c. 69., such justice may commit such offender to gaol until the next quarter sessions, to be tried and punished as by that act directed. 24 G. 3. c. 47. *sess.* 2. *f.* 15, 16.

In the execution
of their office.

By 26 G. 3. c. 77. Whenever any person shall be charged with assaulting or obstructing any officer of the customs or excise in the execution of his office, or person acting in his aid; or with rescuing or attempting to rescue by force uncustomed or prohibited goods after seizure; or of any offences respecting quarantine; and the same shall be made appear to any justice of the King's Bench by affidavit or by certificate of an indictment or information filed against such person in the said court, for such offence; he may by warrant cause such person to be brought before him or some other judge of the said court, or before one justice of the peace, in order to be bound with two sureties in such sum as the said warrant shall express, to appear in the said court at the time mentioned in such warrant to answer all and singular the indictments or informations for the said offences; and for want of such sureties, such judge or justice may commit such person to the common gaol until he shall have become bound or be discharged by order of such court, in term time, or by one of the judges of the said court in vacation; and the re-

cogni-

When a warrant
may be granted
by a justice of
the K. B.

cognizance shall be returned and filed in the said court; and shall continue in force until such person be acquitted, or receive judgment, unless sooner ordered by the said court to be discharged. *f.* 18.

Bail.

And if any person shall by this act be arrested and taken before a justice for what is by this act deemed a *misdemeanor*, such person shall not be admitted to bail, unless he enter into recognizance with two sufficient sureties, himself in 200*l.* and such sureties in 100*l.* each, to appear at the next general gaol delivery, for the county for which the justice before whom he shall be brought shall act, and answer to any indictment which may be found at such court against him for such misdemeanor, which recognizance shall be forthwith transmitted to the clerk of assize. 24 G. 3. c. 47. *sess.* 2. *f.* 19.

Jurisdiction to justices for fines incurred against the laws relating to the customs.

By 49 G. 3. c. 65. it is enacted that any two justices for any county, riding, division, city, or liberty, wherein the offence shall arise, or wherein the offender shall be found, may hear and determine all prosecutions for penalties incurred by any offence against any act now or hereafter to be made relating to the revenue of customs; and upon information exhibited before them for the recovery of any such penalties, summon the party accused, and upon appearance or default proceed to the examination of the fact, and upon due proof thereof, either upon confession or upon the oath of one witness (which oath the said justices are thereby empowered to administer) convict the offender in the said penalties, and in case of non-payment they may cause the same by warrant of distress and sale under their hands and seals to be levied upon the goods and chattels of the said offender, and in default of sufficient distress commit to any of His Majesty's gaols in the county wherein the offence shall have arisen, or wherein the offender shall have been found, for the space of six months, or until the said penalty shall be paid.

Not to apply to fines beyond 50*l.*

By *f.* 2. Nothing in this act shall empower the said justices to hear or determine any prosecution for such penalties as aforesaid, in any case wherein the same shall in the whole exceed the sum of 50*l.* unless they shall be so empowered by any other act or acts of parliament now or hereafter to be made.

Summons left at house to be sufficient.

And by *f.* 3. Whereas doubts have arisen in proceedings before justices of the peace for penalties or forfeitures incurred by offences against the laws relating to the revenue of customs, where such justices have issued out summons for the appearance of the party against whom such proceedings have been instituted, which summons hath been left at the house or usual place of residence of such party, whether

the same should be deemed sufficient and as legal and effectual a notice as if the same had been personally served upon such party; for the removal of such doubts it is declared and enacted, that in all proceedings before any justices of the peace for any fine, penalty, or forfeiture incurred under any acts in force or thereafter to be made relating to the said revenue, every such summons so left as aforesaid and directed to such party by his right or assumed name, shall be (except where particular provisions are or shall be made for summoning offenders, or for condemning seizures made from persons unknown) deemed to be as sufficient a summons, and as effectual a notice as if personally served, and as if the same were directed to such party by his proper name.

And by *f. 4.* Where any party shall be convicted before any two justices of the peace, in any penalty incurred by any offence against any act relating to the said revenue, wherein no power of mitigation shall be given to the said justices, or where it shall be given not specifically by the same act or acts, but only by reference to some other law or laws, it shall be lawful for the said justices, in cases where upon consideration they shall deem it expedient, to mitigate the said penalty to not less than one-half of the amount of the penalty in which the offender has been convicted. Power of mitigation.

And by *f. 5.* Where any such offender shall have been committed to any such gaol for default of such distress, and shall there remain until the expiration of the period for which he shall have been committed, he shall be wholly discharged from the payment of such penalty in respect whereof such warrant hath been issued, as if the full penalty had been paid by the said offender immediately upon his conviction. Imprisonment expired, to clear from fines.

And by *f. 6.* no information or proceeding for any fine, penalty or forfeiture incurred by any offence against any act now or hereafter to be made, relating to the said revenue, shall be exhibited or instituted before any justice or justices after the expiration of six months from the time of the offence whereby such fine, &c. hath been incurred. Limiting the time for laying informations.

[The succeeding sections of this act relating to the port of *London* are omitted here.]

If any person passing in a public and avowed manner with prohibited and uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to search for, or seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force to force; and if any person so molesting or resisting the officers be wounded, maimed, or killed, such officers and their assistants may plead the general issue, and give this act and the special matter in evidence; and all Officers may oppose force with force.

justices of the peace and others, before whom they shall be brought for such wounding, &c., shall admit them to bail. 9 G. 2. c. 35. §. 35.

Dangerously
hurting an of-
ficer, finable.

By the 13 & 14 C. 2. c. 11. Where any officer or officers of the customs shall be, by any person armed with a club or any manner of weapon, forcibly hindered, affronted, abused, beaten, or wounded to the hazard of their lives, either on board any ship, or on the land or water, in due execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine, not exceeding 100*l.*, and the offender remain in prison till he be discharged by order of the exchequer, both of the fine and of the imprisonment, or discover the person that set him on work. §. 6.

By eight or
more, transpor-
tation.

And by the 6 G. c. 21. If any officer of the customs be forcibly hindered, wounded, or beaten in the due execution of his office by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more, the offenders and those aiding therein shall be transported for any term not exceeding seven years. §. 34, 35.

But if any offender shall in two months after his offence, and before conviction, discover two or more of his accomplices so as two at least be convicted, he shall have 40*l.* reward for each convicted, and be acquitted of his own offence. §. 36.

And if any other person shall in three months discover any offender or offenders so as to be convicted, he shall have 40*l.* for each convicted, over and above any other reward on account of the run goods. §. 37.

The same to be paid by the receiver-general, or cashier of the customs, on producing the judge's certificate. §. 38.

Opposed on ship-
board, transpor-
tation.

And by the 9 G. 2. c. 35. more generally it is enacted that if any officer of the customs or excise, being on board any ship, boat or vessel, be forcibly hindered, wounded or beaten in execution of his office, either in the day or night; the offender and those acting in his aid shall be transported for seven years. §. 28.

Hundred shall
answer damages.

By the 19 G. 2. c. 34. §. 6. If any revenue officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid or secured duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten, wounded, maimed or killed by any offender against this act, or the goods so seized be rescued; the inhabitants of the rape, lathe, or hundred, shall answer

answer the damages sustained by such officer or person, and also pay 100*l.* to the executors or administrators of such person so killed, so as the sum to be recovered for such beating, wounding, or maiming exceed not 40*l.*, nor for the loss of goods 200*l.* against the said inhabitants, to be recovered and levied as in cases of robbery by the 8 G. 2. c. 16.

But no person shall recover damages for such beating, wounding, maiming, or loss of goods, unless he cause notice to be given in four days to two inhabitants of some town, village or hamlet near to the place where such fact shall have been committed, and in eight days make oath before a justice whether he do know any of the persons concerned; and if he declare that he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such notice and enter into such recognizances, as persons robbed are by the 8 G. 2. c. 16. directed to give. *Id.* s. 7.

Where the offender shall be convicted in six months, the rape, &c. shall not be liable. s. 8.

The action against the rape, &c. must be commenced within a year. s. 9.

If any officer of the customs or excise shall not use his best endeavours to seize any tea, coffee or foreign spirituous liquors liable to forfeiture, or to stop, detain and carry before one or more justices any person whom he is authorized to stop; in such case one justice residing near to the place where such officer shall make default, on complaint thereof made to him within three months after such default, may examine into the truth of such complaint upon oath, and if it shall appear to the said justice that there is reasonable ground for the complaint, he shall transmit the said complaint, together with the examinations taken before him thereon, unto the commissioners of the customs or excise respectively; who shall, by such ways and means as to them shall seem meet, examine into the truth of the complaint. And in case they think fit on the ground thereof to dismiss the officer from his majesty's service, he shall be incapable of executing any office in the customs or excise for the future. Provided that no person shall be compelled to go above five miles from his usual place of abode to be examined before any justice, upon any complaint to be made to him as aforesaid. 19 G. 3. c. 69. s. 32.

Penalty on officers not doing their duty.

And here it may be proper to take notice of a general clause in the statute of 8 G. c. 18. which brings the cognizance of many forfeitures under the jurisdiction of the justices of the peace, and consequently enlarges considerably this title relating to the customs; (to wit), in regard that the keeping and maintaining the horses seized from the time

Power of the justices in recovering penalties.

of the seizure to the time of condemnation in the court of *exchequer* is very chargeable, and the charge of condemning such vessels, boats and horses is very great; therefore it is enacted that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the *customs*, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses or other cattle or carriages used for removing or carrying such goods may be heard and determined by two justices in such manner as is appointed by the act of 6 G. c. 21. s. 20. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made (being out of the limits of the chief excise office in London); who shall summon the party accused, and on appearance or default proceed and give judgment, and issue warrants for sale of such as shall be by them condemned, whose judgment shall not be liable to any appeal or *certiorari*. 8 G. c. 18. s. 16. continued; *vide ante*, 49 G. 3. c. 65.

By 24 G. 3. c. 47. *sess.* 2. All seizures of horses, cattle, carts, waggons, boats and carriages whatsoever for being used in the removing, carriage or conveyance of any goods, or for any other cause of forfeiture contrary to this or any other act relating to or for preventing frauds in the revenue of the customs, shall and may be heard and determined by two neighbouring justices, in such manner and under the like rules as the seizure of any horse, cattle or carriage liable to forfeiture for being used in removing, carrying or conveying of any prohibited or run goods by virtue of any act of parliament. And such judgment shall be final, and not liable to any appeal, or any writ of *certiorari*. s. 30.

Justices on trial
to proceed on
the merits.

And by the 9 G. 2. c. 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the fact, form, or manner of seizure. s. 34.

Officer on trial
need not prove
his commission.

If any question shall arise, whether any person be an officer of the customs, proof shall be admitted that such person was reputed to be and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 G. c. 30. s. 32.

Proof to lie on
the owner.

If any dispute shall arise, whether the customs have been paid, the proof shall lie on the owner or claimer, and not on the officer. 12 G. c. 28. s. 8.

Goods forfeited
may be restored.

In case of any goods whatsoever, or any ships, vessels, boats, horses, cattle or carriages being seized as forfeited by virtue of any law relating to the customs, the commissioners on evidence given to their satisfaction that the forfeiture arose without any intention of fraud in the proprietor, may restore the same in such manner and on such terms as they

shall

shall direct; and if such proprietor shall comply with the terms so prescribed, the officer who seized the same shall not proceed for the condemnation thereof; but if he shall not comply with the terms prescribed, such officer shall be at liberty to proceed for condemnation of such goods, &c. But such owner accepting such terms shall not be entitled to any damages, or to maintain any action on account of such seizure. 27 G. 3. c. 32. s. 15.

By the 51 G. 3. c. 96. reciting that by the 27 G. 3. c. 32. the commissioners of the customs are authorized to direct, under the circumstances and on the terms therein mentioned, any goods or commodities whatever, or any ships, vessels, boats, horses, cattle or carriages which shall have been seized as forfeited in pursuance of any acts relating to the revenue of customs, to be restored to the proprietors: And that whereas doubts have arisen whether the powers so vested in them extend to authorize the delivery of goods and commodities, ships, &c. &c. that may have been seized as forfeited by any officer of the customs, or other person duly authorized to make such seizures in pursuance of any other act of parliament; it is enacted, that all the powers vested in the commissioners of the customs by the said 27 G. 3. c. 32. by virtue of which the commissioners of the customs are authorized to direct any goods or commodities whatever, or any ships, &c. &c. seized as forfeited by virtue of any acts relating to the customs, to be restored to the proprietors, on the proof and on the terms and conditions in the said act mentioned, shall extend to authorize the commissioners of the customs in *England* to order any goods or commodities whatever, or any ships, &c. that shall have been or shall be seized as forfeited either by any officer of the customs, or by any other person whatsoever by virtue of any act made for the protection of trade, the benefit of commerce, or the encouraging and increasing of shipping and navigation, or by virtue and in pursuance of any other act in any respect relating to the customs, to be restored to the proprietor, whether such goods, &c. shall have been seized as forfeited in *Great Britain* or on the high seas, or in any other of his majesty's dominions, colonies, settlements or plantations, in case evidence shall be given to the satisfaction of the said commissioners, according to their respective jurisdictions, that the forfeiture arose without any design or fraud in the proprietor of such goods, &c. &c.; and also, in case the seizure shall have been made by any such officer or other person in any of his majesty's colonies, &c. or on the high seas, and it shall be made appear to the satisfaction of the commissioners of the customs, or any four or more of them, that such seizure was occasioned by the proprietor of any such goods, &c. &c. having acted in confor-

Powers vested in the commissioners of the customs by recited act for restoring goods and vessels, &c. that have been seized, to the owners, under certain circumstances, to extend to seizures under any other act, provided the forfeiture arose without any design of fraud, &c.

mity with any orders which the chief officer of any such colony shall have deemed it expedient on any particular emergency to issue.

Seizures to be restored to the proprietors on such conditions as the commissioners shall direct, &c.

In any case wherein the said commissioners shall exercise the powers hereby vested in them, such goods, &c. &c. shall be restored to the proprietor on such terms and conditions as shall appear to the said commissioners to be reasonable, and as they shall think fit to direct; and if the said proprietor shall comply with the terms prescribed by such commissioners, it shall not be lawful for the officer or any other person who shall have seized such goods, &c. or any other person whatever on his behalf, to proceed in any manner for the condemnation thereof; provided that if such proprietor shall accept the terms prescribed by the said commissioners, such proprietor shall not have any recompence on account of the seizure or detention of such goods, &c. &c. or have any action whatever for the same. *f. 2.*

Masters of ships detaining certificates.

By 28 G. 3. c. 34. *f. 13.* after reciting that it has been found that masters of ships have wilfully and maliciously detained certificates granted in pursuance of 7 & 8. W. 3. c. 22. and 26 G. 3. c. 60. it is enacted that in case the owner of any vessel, whose certificate of registry shall be so detained and refused to be delivered up, [or in case the master of any vessel, who shall have received the certificate of the registry thereof (whether he be a part owner or not), shall wilfully detain and refuse to deliver up the same to the officers empowered to make registry and grant a certificate thereof on the owner or owners, or the major part of them, if such master has not any property therein, or on the other owners, or the major part of them, if such master hath any share or property therein, requiring him so to do, 34 G. 3. c. 68. *f. 18.*] shall make complaint on oath to any neighbouring justice, he shall by warrant cause such master to be brought before him to be examined; and if it shall appear that the same is not lost or mislaid, but wilfully and maliciously detained by such master, he shall on conviction pay 100*l.*; and if not paid within *two* days after conviction, he shall be committed to goal for not less than *six* nor more than *twelve* months, at the discretion of such justice. 34 G. 3. c. 68. *f. 18.*

And such justice may, and is required by warrant, to cause search to be made for such certificate; and if found, he shall cause the same to be delivered to the owner: and if not found, he shall certify the said detainer, refusal and conviction to the person who granted such certificate, who shall, on the terms and conditions of the said acts being complied with, make registry of such vessel *de novo*, and grant a certificate thereof, notifying on the back of such certificate the

the ground upon which the vessel was so registered *de novo*.

28 G. 3. c. 34. s. 14. 34 G. 3. c. 68. s. 19.

And whereas by 23 G. 3. c. 70. divers regulations are made for the more effectual preventing vexatious suits against the officers of excise, and their assistants, the same shall extend also to the officers of the customs and their assistants.

Regulations of 23 G. 3. c. 70. extended to officers of the customs.

24 G. 3. c. 47. sess. 2. s. 35. (a)

[Sect. II. *Of Regulations respecting Emigration.*]

[43 G. 3. c. 56 c. 57. s. 128—134.]

By the 43 G. 3. c. 56. Whereas in various parts of the united kingdom of *Great Britain and Ireland* several persons have been seduced to leave their native country under false representations, and have suffered great hardships on ship-board for want of water and provisions, and other necessities, and of proper accommodation on their passage; from *July 1, 1803*, no master of any *British* vessel from any place in the united kingdom shall carry to any parts beyond sea a greater number of persons than one for every two tons burthen; and if any part be laden with goods, then in that proportion for the part unladen, and such goods, &c. with which such vessel may be partly laden shall, at the sight and under the direction of the collector or comptroller, or other officer of the customs, at the place where such goods, &c. shall be taken on board, be stowed so as to leave sufficient and wholesome accommodation for the proportion of persons allowed in such case to be received on board. s. 1.

British vessels to carry a proportion of passengers to the tonnage.

If the master shall take on board, or if he or the owners shall engage to take on board, more than allowed, they shall forfeit 50l. for each person, and the vessel shall be detained till the penalty be paid. s. 2.

Penalty for neglect.

Every such vessel bound to *North America* shall be furnished with at least twelve weeks provisions and water, sufficient to afford an allowance *per day*, during the voyage, of not less than half a pound of meat, one pound and a half of bread, biscuit or oatmeal, with half a pint of melasses, and one gallon of water, to each person on board, whether adult or child; and the person having the command of such vessel is directed to give out to each person on board at least the allowance herein directed, every day of the voyage, under the pain of 20l. for each neglect or omission; and any person demanding a clearance for any such vessel which shall

Provisions, &c. in vessels bound to *North America*.

Penalty for neglect, or demanding a clearance for vessels not properly stored.

(a) See this act more at large under the following head: *Of the Excise in General.*

not be stored with provisions and water as herein directed shall forfeit 50*l.* for each person for whom there shall not be a quantity of provisions and water sufficient to afford such allowance. *f.* 3.

Before receiving a clearance, a muster-roll shall be delivered to the officer of the customs.

Penalty for delivering a false muster.

Officer of the customs, with a justice, shall muster the passengers and men, and for any deviations from the provisions of this act, may detain the vessel till bail for the penalties be found.

No clearance until the persons be mustered, &c. and if the regulations have been complied with, a certified copy of the muster shall be delivered to the master, and the original be preserved at the custom-house.

And before receiving a clearance or sufferance for any such vessel, the person having charge thereof shall deliver to the officer of the customs from whom such clearance or sufferance shall be demanded a muster roll, distinguishing the passengers from the crew, and specifying their names, age, and sex, and the conditions upon which persons have been or are to be received on board, and the places to which such persons have severally contracted to be conveyed; and every person delivering a false muster roll shall forfeit for every offence 50*l.* for each person omitted, or falsely described therein; and the collector, comptroller or surveyor of the customs, or in their absence the resident officer of the customs at the port, together with a justice or other magistrate, if such justice or magistrate can be found at such place, or within a convenient distance thereof, are required to muster the passengers and crew on board every such vessel immediately before sailing, and to compare the persons found on board with the persons specified in the said muster roll, and to search and inspect every such vessel; and if it shall appear that a false muster-roll has been delivered, or if more persons shall be found on board than in the proportion allowed, or if the vessel shall not be stored and provided with provisions and water sufficient to afford the proper allowance, then such collector or comptroller or principal officer, together with any such justice or other magistrate, may seize and detain such vessel, and the person having charge or command thereof, until he or the owner or owners shall find bail to the amount of the penalties imposed for exceeding the proportion of persons to be received on board, and for demanding a clearance for any such ship or vessel without being stored with provisions and water in manner directed, and for delivering a false muster-roll; and no clearance shall be given by any officer of the customs until the said collector or comptroller, surveyor or principal officer, together with such justice or magistrate, shall have so mustered the persons on board, and searched and inspected the ship or vessel and provisions and water, and if upon such inspection the regulations of this act shall be found to have been duly complied with, a copy of the said muster-roll so delivered as aforesaid shall be certified by such collector or comptroller or principal officer of the customs aforesaid, to be delivered to such master or other person aforesaid, and shall be preserved by him on board such vessel; and the original muster roll delivered by such master or other person as aforesaid, shall

shall remain at the custom-house where the clearance or sufferance is granted. *§. 4.*

Provided that if upon any such muster, or otherwise, any person who has entered into any contract for such voyage (other than the crew of such vessel,) shall signify to such collector or comptroller, or other officer, or to any justice or other magistrate, that he or she is desirous of being relanded, or of not proceeding on any such voyage, such collector, comptroller or other officer, and such justice or other magistrate are required to take such person out of the vessel; and such justice or magistrate are required to set any such passenger free from his engagement, reserving to either party any legal claim which may arise in consequence thereof. *§. 5.*

No passenger shall be received on board of any such vessel, unless at a place where a custom-house shall be established, or officers of the customs shall be stationed; and if any passengers shall be taken on board any such vessel at any other place, the person having charge of such vessel shall forfeit 500*l.*, and such vessel shall be seized and detained by any officer of the customs until such penalty be paid, or such master or other person or the owner or owners of such vessel find bail for the same. *§. 6.*

No such vessel carrying 50 persons or upwards, including the crew, shall be cleared out, unless such vessel be provided with a surgeon, who shall produce to the officer required to give the clearance or sufferance a certificate of his having passed his examination at surgeons' hall in *London*, or at the royal college of surgeons of *Edinburgh* or *Dublin*. *§. 7.*

Every such surgeon shall have a medicine chest properly stored with medicines, in proportion to the number of persons on board such vessel, according to the assortment generally used for such voyages on board of his majesty's ships of war; and before any such vessel shall be allowed to be cleared out, such surgeon shall specify upon oath, before the collector or comptroller, or other chief officer of the customs, at the place from whence such vessel is to be cleared out, the contents of such medicine chest, and shall further make oath that the medicines are of good and proper quality, to the best of his knowledge and belief; which oath such collector, &c. is empowered to administer; and the affidavit of every such surgeon shall be preserved in the custom-house where the clearance or sufferance shall be granted: and the master or owner failing to provide a medicine-chest of this description, and every such surgeon neglecting to make such oath, shall forfeit 50*l.* *§. 8.*

The bedding of every passenger on board shall be aired by exposure upon the deck, when the weather will permit, once

If any person, other than the crew, desire not to proceed, he shall be taken out of the vessel.

No person shall be received on board at any place where an officer of the customs is not stationed, on penalty of 50*l.*

No vessel carrying 50 persons shall be cleared out, unless provided with a surgeon, who shall produce a certificate of examination.

Every surgeon shall have a medicine chest stored; and shall specify the contents, and that they are good, upon oath, which shall be deposited in the custom-house. Penalty on masters, &c. not providing such chest, or surgeon not making such oath.

Bedding to be aired and vessel fumigated, on penalty of 20*l.*

once a-day during the voyage, and such vessel shall be fumigated with vinegar at least twice a week; and every such person having such charge or command shall forfeit 20l. for each neglect in airing the bedding, or in fumigating the vessel. *s. 9.*

No clearance shall be granted, unless the master and surgeon give bond to keep journals during the voyage, containing certain particulars.

And no clearance or sufferance shall be granted, unless the person having charge thereof, and also the surgeon thereof, where a surgeon is by the act required, shall have given bond to his majesty, such bond to be taken by or left in the hands of the collector or comptroller, or other principal officer of the customs at the place from whence such vessel shall be cleared out, in the sum of 100l., with condition that such person having such charge as aforesaid, and such surgeon, shall severally keep a regular and true journal of the greatest number of persons which shall have been on board of such vessel at the time of her departure, and at any time during her voyage, and until her arrival at the port of her destination, and of the provisions and water on board, and the delivery of the daily allowances thereof in manner herein directed, and of the airing of bedding, and fumigating the vessel, and of the deaths of any of the passengers or crew, and the cause thereof, during the voyage, from the vessel's first departure to her arrival at the port of destination; and such person having such charge, and such surgeon, shall deliver such journals to the collector or other officer as aforesaid, at the first port of the united kingdom where such vessel shall arrive from such port of destination, and shall severally make oath to the truth of their respective journals, to the best of their knowledge and belief, before such collector or other officer as aforesaid, which oath he is required to administer; and such collector or other officer shall deliver to such master or other person as aforesaid, and to such surgeon respectively, copies of the oath of such master or other person, and such surgeon, and also of the said journals, which copies shall severally be attested as true copies under the hand of such collector or other officer as aforesaid; and duplicates of the said copies, attested in like manner, shall be transmitted by the said collector or other officer aforesaid, to the commissioners of his majesty's customs in *London, Edinburgh, or Dublin*, respectively, according as such journal shall be delivered and such oath shall be made, in *England, Scotland, or Ireland*; and such master or other person aforesaid, or surgeon, acting contrary hereto, shall for every such offence severally forfeit 100l. *s. 10.*

Penalty for neglect.

No master of any other than a *British* vessel clearing out after *July 1, 1803,*

It shall not be lawful for any master or other person taking or having the charge or command of any vessel, other than a *British* vessel, owned, navigated, and registered according to law, clearing out from any place in the united kingdom after

After the said 1st of July 1803, to take on board a greater number of persons, including the crew, than in the proportion of one person for every five tons of the burthen of such vessel; and every such vessel shall be taken to be of such tonnage as shall be ascertained by the oath of the person having the charge or command thereof, taken before the collector or other chief officer of the customs at the port from whence such vessel shall be cleared out, who is required to administer the same; and such collector or chief officer may muster the passengers and crew, and search and inspect every such vessel, and if more persons be found on board than in the proportion allowed, every such master or other person as aforesaid shall forfeit 50l. for every person on board beyond the proportion herein allowed, one moiety to his majesty, and the other half to such collector or other officer aforesaid, who is empowered to seize and detain such ship or vessel until such penalties be paid. *f. 11.*

shall have on board more than one person for every five tons burthen, on penalty of 50l. for each beyond that proportion.

Application of penalty.

Provided, that nothing herein contained shall extend to vessels in the service of his majesty, or of his majesty's postmaster-general, or of the customs and excise in *Great Britain and Ireland*, respectively, or of the *East India* company. *f. 12.*

Act not to extend to certain vessels.

And if, after any such vessel shall have been cleared out, any person having the charge or command thereof shall unship, reland or permit to be unshipped or relanded any provisions or water, such master or other person shall forfeit 200l. *f. 13.*

Penalty on masters for relanding provisions or water;

Provided that if any passenger, desirous not to proceed on such voyage, shall be relanded, or shall not proceed in the manner herein-before directed, then such master, or other person aforesaid, may unship or reland under the inspection of the officer of the customs at the place from whence such vessel shall be cleared out, a quantity of provisions and water not exceeding the proportion sufficient for the allowance of such passenger. *f. 14.*

except a proportion if any person be relanded.

And an abstract of this act shall be prepared by the direction of the commissioners of his majesty's customs in *England, Scotland, and Ireland* respectively, and a copy thereof be hung up in the custom-house of every port of the united kingdom, and a copy thereof, and a copy also of the said muster-roll shall be affixed to the most public place of every vessel carrying passengers under the regulations of this act; and the person having charge or command of such vessel shall cause the said copies to be renewed, so that the same may be at all times accessible to every person on board such vessel, upon pain of 20l. for each offence. *f. 15.*

An abstract of this act to be hung up in every custom-house; and a copy thereof, and of the muster-roll, to be hung up in every vessel, on penalty of 20l.

And all captains and officers commanding his majesty's ships of war or revenue cutters, who shall meet any such vessels

Officers commanding ships of war or revenue

nue cutters, shall call for muster-roll and search ships, and if the provision of this act have not been complied with, may seize and send them to some port.

vessels at sea, shall call for the said muster-roll, and search such vessel; and if any more or other persons shall be found on board than are specified in such muster-roll, or if a quantity of provisions shall not be found on board sufficient to afford to each person the daily allowances herein directed during the remainder of the voyage, unless it shall appear that such vessel has been detained on her passage, after leaving the place at which the passengers embarked, beyond the time for which the quantity of provisions hereby required are directed to be provided; or if such allowances shall not have been dealt out in the preceding part of the voyage in manner herein directed, then such officers may seize and detain such vessel, until bail shall be given at the place to which such vessel may be carried by the order of such officers, who are empowered to put hands on board to take charge of her for that purpose; and if the state of such vessel and the provisions on board will permit, such officers may send back such vessel to the port from whence she was cleared out, or carry such vessel into such port as the state of the provisions on board, or the supply which such captains or officers can afford, will permit. *s. 16.*

No such vessel to be cleared out, unless bond be given that the vessel is seaworthy, and that the passengers shall be delivered at the port contracted for.

No such ship or vessel shall be cleared out unless the owner or person having the charge or command thereof shall have given bond to his majesty, such bond to be taken by and left in the hands of the collector or controller, or other proper officer of the customs in the place from whence such vessel shall be cleared out, in an amount equal to 20*l.* for each passenger on board such vessel, with condition that such vessel is seaworthy, and that every such passenger, if alive, shall be landed at the port or ports to which such passenger shall have contracted to be conveyed. *s. 17.*

Penalty on officers of the customs signing sufferances contrary to this act.

If any officers of the customs shall knowingly sign or give out any clearance or sufferance for any such vessel, contrary to the regulations of this act, he shall forfeit his employment, and 50*l.*

How penalties shall be paid and recovered.

All sums of money, penalties, and forfeitures in this act mentioned shall be paid in lawful money of *Great Britain*, and any penalty or forfeiture inflicted by this act may be recovered in any of his majesty's courts of record at *Westminster*, in the name of his majesty's attorney-general, or in the name of any person or persons whatsoever, the person against whom judgment shall be given shall pay double costs of suit; and every such action or suit shall be brought within three years after the offence committed, and not afterwards; one moiety of every penalty to go to his majesty, and the other moiety to the use of such person as shall first sue for the same, after deducting the charges of prosecution from the whole. *s. 19.*

Double costs. Suits for penalties may be brought within three years. Application of penalties.

If any person taking any oath by this act authorized to be taken shall commit wilful perjury, or if any person shall suborn any person to take any oath by this act authorized to be taken, whereby such person shall commit wilful perjury, every such person shall incur the pains of wilful and corrupt perjury, or subornation of perjury. *f. 20.*

Penalty on perjury, or subornation of perjury.

Any action or suit brought in pursuance of this act shall be commenced within three calendar months after the fact committed, and not afterwards, and shall be brought in the county or place where the cause of action shall arise, and not elsewhere, and the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear to be so done, or if any such action or suit shall be brought after the time limited, or shall be brought in any other county, city or place than as aforesaid, then the jury shall find for the defendant; and upon such verdict, or if the plaintiff become nonsuited, or discontinue, or a verdict pass against him, or upon demurrer judgment be given against him, the defendant may recover double costs, and have the like remedy for the same as any defendant hath for costs of suit in other cases by law. *f. 21.*

Limitation of actions.

General issue.

Double costs.

Provided, that nothing in this act contained shall extend, alter or affect any law now in force for the regulation of artificers and others from going from any part of the kingdom to parts beyond the seas, or to regulate the vessels conveying such artificers or other persons whatsoever, or the masters or commanders, or persons having the charge of such vessels. *f. 22.*

Act not to alter laws for restrictions or regulations of artificers from going beyond the seas.

By 43 G. 3. c. 57. Officers of the customs are invested with certain powers with respect to vessels attempting to clear outwards without a bond having been given by the master not to sail without convoy, and not to separate from it, &c.

Vessels sailing without convoy.

And by 43 G. 3. c. 134. which is the act for the relief of the captors of prizes, certain duties are imposed on goods captured and secured in the king's warehouses, and commissioners of the customs are empowered to order certain prize goods to be removed to any custom-house in *Great Britain, &c.*

Prize goods.

[But both these acts being in continuance only during the present hostilities, and not being connected with the duty of a justice, constable, or other peace-officer, we merely refer parties concerned to the acts themselves.

The 43 G. 3. c. 128. respects the importation of goods, the testimony of witnesses before the surveyor-general of the customs,

customs, and the sale to individuals of condemned vessels forfeited under the custom and excise laws, but does not regard the duty of a justice.]

Sect. III. Of the Excise in general.

[12 C. 2. c. 24. f. 33. 45—48. — 15 C. 2. c. 11. f. 10. 16. 19. 22. 26, 27. — 5 W. c. 20. f. 16. 48. — 7 & 8 W. c. 30. f. 24. — 6 G. c. 21. f. 7. 24. 41. — 11 G. c. 30. f. 16. 31, 32. 40. — 12 G. c. 28. f. 7, 8. 16. — 9 G. 2. c. 35. f. 26. 30, 31. 34. — 18 G. 2. c. 26. f. 13. — 19 G. 2. c. 34. f. 5. — 23 G. 2. c. 26. f. 13. — 23 G. 2. c. 26. f. 12. — 24 G. 2. c. 40. f. 29. — 27 G. 2. c. 20. f. 1. — 32 G. 2. c. 17. f. 1, 2. — 5 G. 3. c. 43. f. 26. — 21 G. 3. c. 55. f. 27, 28. — 23 G. 3. c. 70. f. 29—35. 26 G. 3. c. 77. f. 8. — 28 G. 3. c. 37. f. 15. 21. — 32 G. 3. c. 10. f. 1, 2. 10. — 42 G. 3. c. 38. f. 35. — 42 G. 3. c. 93. f. 17, 18. — 43 G. 3. c. 81. f. 16. — 46 G. 3. c. 112. — 49 G. 3. c. 81. f. 8.]

Head office, and commissioners.

One principal head office of excise shall be kept in *London* or within ten miles thereof, to which all other offices shall be subordinate and accountable; which said office shall be managed by such commissioners as the king shall appoint. 12 C. 2. c. 24. f. 46. 5 W. c. 20. f. 16.

Sub-commissioners and other officers.

All the places within the bills of mortality shall be under the immediate care and management of the said head office and such and so many subordinate commissioners and sub-commissioners and other officers shall be appointed by the king in other places, as he shall think fit. 12 C. 2. c. 24. f. 48.

Office, when to be kept open.

The excise office, in all places where it shall be appointed, shall be kept open from eight in the morning till two in the afternoon. 23 G. 2. c. 26. f. 12.

Office in market towns.

And the commissioners or sub-commissioners shall appoint under their hands and seals such persons as they shall think needful in each market-town, to be there upon every market-day, in some known and public place, for receiving entries and duties, and performing all other things touching the revenue of excise; and if such office shall not be so kept in each market-town, the commissioners or others neglecting or refusing shall for every market-day forfeit 10l: half to the king and half to him that will inform and sue; and such person as shall come to such market-town to make his entry or payment, and shall tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty or forfeiture for such weekly or monthly entries or payments, as should have been made or paid on such market-day. 15 C. 2. c. 11. f. 10.

The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into about 50 *collections*; some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: every collection is subdivided into *districts*, within each of which there is a *supervisor*; and each district is parcelled into *cut-rides* and *foot-walks*, within each of which there is a *gager* or surveying officer. *Gilb. Exch. Append.*

Collections, districts, and other divisions.

The commissioners or sub-commissioners in their respective circuits and divisions shall constitute under their hands and seals such and so many gagers as they shall find needful. 12 C. 2. c. 24. s. 33.

Gagers;

In order to which, he who would be made a gager must procure a certificate that he is above 21 and under 30 years of age; that he understands the four first rules of arithmetic; that he is of the communion of the church of *England*; how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two he cannot (by the rules of the office) be admitted. *Gilb. Exch. Append.*

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability, and that the said certificate is of his own hand-writing: such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *Gilb. Exch. Append.*

At the bottom of the certificate must be his affidavit that neither he nor any one else to his knowledge hath directly or indirectly given or promised to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being instructed. *Id.*

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have being delivered to such pupil, he goes with and attends the officer, who instructs him and takes surveys, and in his own books makes the like entries as if he were an officer, until the instructor certifies that he is fully instructed. *Id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *Id.*

No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be or before a baron of the exchequer, take the oaths of allegiance and supremacy, together with this oath following:

Officer's oath.

You shall swear to execute the office of — truly and faithfully without favour or affection, and shall from time to time true account make and deliver to such person or persons as his majesty shall appoint to receive the same, and shall take no fee or reward for the execution of the said office from any other person than from his majesty, or those whom his majesty shall appoint in that behalf.
12 C. 2. c. 24. f. 47.

The justices shall certify the taking of such oath to the next quarter sessions, there to be recorded. f. 48.

The officer shall also enter a certificate thereof with the auditor of the excise: and if any such person shall act before he shall have taken the said oaths, and entered his certificate with the auditor, he shall forfeit 50l. a month. 15 C. 2. c. 11. f. 27.

He shall also, within six months after his admission to the office, take the oaths and subscribe the declaration against transubstantiation at the quarter sessions, in like manner as other persons admitted to offices.

Officer's general
duty.

The business of the *supervisor* is, to be continually surveying the houses and places of the person within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does each day and part thereof; and also to set down the behaviour good or bad, the diligence or negligence of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. *Gilb. Exch.* Append.

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish, reprimand, reduce, or discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is. *Id.*

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book, called the reprimand-book, places the admonitions, reprimands, and the like to each officer's account, and writes every offender word thereof. Which reprimand book is resorted to, upon discovering new faults; and if it be there found that the officer has before been admonished and reprimanded so often that there are no hopes of his amending, he is then discharged.

The

The said book is likewise resorted to when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if of three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *Id.*

The collector's business is, every six weeks to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before the justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *Id.*

For faults, gagers are reduced either to be only assistants, or from foot-walks to out-rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors. *Id.*

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *Gilb. Exch. Append.*

In the act of the 24 G. 2. c. 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this; all *finés, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at Westminster, and shall be half to the king, and half to him that shall inform or sue.* s. 29.

Penalties by the excise laws.

That is to say, If it is within the limits of the chief office in London, the offences shall be determined by the commissioners (or any three of them, 1 G. 2. st. 2. c. 16. s. 4. 5.) or in case of appeals, by the commissioners of appeals; in all other places they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed; and in case of neglect or refusal of such justices by the space of 14 days next after complaint made, and notice thereof given to the offender, then the sub-commissioners may hear and determine the same: and if the party find himself aggrieved by the judgment given by the said sub-commissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace and sub-commissioners:

By two justices.

missioners aforesaid, are required upon any complaint or information (F) exhibited and brought of any such forfeiture made or offence committed to summon (G) the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence (H) and to issue warrants (I) under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in [not less than 4, nor more than 8 days, 27 G. 2. c. 20. s. 1.]; and for want of sufficient distress, to imprison (K) the party offending till satisfaction be made. 12 C. 2. c. 24. s. 45.

Not necessary to be the two next justices.

Residing near] Where the next justices are empowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed that the justices residing near shall do such a thing, those words are not restrictive, but only directory, and any justices, although not the next justices, may proceed therein. *Shaw. Exc.*

But where the act says, that *any two justices residing near* to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. *T. 14 G. 2. Talbot v. Hubble. 2 Str. 1154.*

Information.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited *in writing*. But if it be a verbal information, the justices ought to make a record thereof, and of the time and place when and where exhibited, which must be expressed in the present and not in the time past: but to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the prosecution was in the proper county; and therefore though it may happen that for laying the information the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned that the information was laid at both towns.

towns for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw. Exc.*

Summon the party accused] A summons left at the house or usual place of residence, or with the wife, child, or menial servant of the person accused, shall be as effectual as if delivered to the person himself. 32 G. 2. c. 17. s. 1. Summons.

And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excise, (except where particular provisions are made for summoning offenders, or for condemning of seizures made from persons unknown,) leaving such summons at the house, workhouse, warehouse, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if personally delivered to him and as if directed to him by his proper name. s. 2.

Proceed to the examination of the fact] And by the 9 G. 2. c. 35. it is enacted that in trials of seizure the seizure shall be taken to have been made as in the information set forth, and the judges and justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. Justices to proceed on the merits.

Give judgment] Although it hath been said that whatever is recorded by the justices of their order, ought to be expressed in words of the present time and tense, yet that doth not make it necessary, nor is it indeed practicable that all that is to be so entered should actually be entered at the instant of time when such judgment is given; for such entering the whole at that time would hinder the dispatch of business and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with and according to such short minutes or notes as are then taken by such justices, it will be as authentic as if it had been entered at the instant of time, in which such order was made or judgment was given. *Shaw. Exc.* Judgmen

And to issue warrants under their hands] It is here only directed that the warrant shall be under the hands of the justices: it need not be under seal also. *Padfield v. Cabell, Vill. Rep. 411.* A warrant does not *ex vi termini* imply an instrument under seal; it signifies no more than an authority. *Ib.* Warrant to distrain.

In many acts of parliament indeed it is expressly directed that the warrant shall be under hand and seal; and it is safe and prudent at least that all warrants should be both signed and sealed.

For levying the same on the goods and chattels of the offender] And in case where the offender shall remove out of the jurisdiction, it is enacted by the 18 G. 2. c. 26. s. 13. and 5 G. 3.

c. 43. s. 26., that the commissioners and justices respectively, within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine and issue any process or warrant, in the same manner as before, they might have done in case of such offences committed within their jurisdiction; and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorized to execute the warrant shall make a return thereto, that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued upon producing to them such warrant and return thereof, to commit such offender to the next county gaol till satisfaction be made.

And to cause sale to be made thereof if not redeemed in 14 days] But by the 27 G. 2. c. 20. the justices may not order the distress to be detained more than eight days, nor less than four. s. 1.

Want of sufficient distress.

For want of sufficient distress] Mr. Shaw and Mr. Barlow are of opinion that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue but shall either pay the whole or be imprisoned for the whole: But perhaps the distinction may be this; where there is a limited time of imprisonment as for instance three months, there the defendant shall not pay part, and then be imprisoned the whole three months which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty; and if part of it is paid already, the enlargement may come the sooner, but payment of the residue.

Imprisonment.

Imprison the party till satisfaction be made] But before an warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender and the offender's goods and that warrant must be returned; all which must be done

before

before any warrant can be regularly made to arrest and imprison the defendant's person. Which method ought to be observed, though perhaps it may be well known by or sufficiently proved before the justices that all the utensils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods be made and delivered to an officer to be executed, and if such officer having made diligent search cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Sharw. Exc.*

And by 28 G. 3. c. 37. All goods in respect whereof any duty of excise is imposed, and all materials, preparations, utensils, and vessels in the custody of the maker or manufacturer thereof or of any person to his use or in trust for him shall be liable to and chargeable with all duties in arrear in respect of any such goods; and shall also be subject to all fines, penalties, and forfeitures incurred by such maker, &c. for any offence against any act relating to the duties on such or the like goods; and it shall be lawful in all such cases to levy such fines, duties, and penalties and use such proceedings as may lawfully be done in relation to such goods, in case the debtor or offender were the true lawful owner. *s. 21.*

All exciseable goods are liable to be seized for arrears of duty, or penalties, wherever found.

Or person for his use, or in trust for him] In the case of *Austin* and another, assignees of *Dormer* a bankrupt, v. *Whitehead* and others, it was determined that if a soap-maker having incurred a forfeiture for concealing soap contrary to 1 G. c. 36. s. 2. become bankrupt, and a provisional assignment of his estate be made, after which the soap is condemned and the bankrupt convicted, and thereupon a warrant issues to levy the penalty on his goods generally, such a warrant is bad, and cannot justify a seizure of the soap in the hands of the assignees. And *L. Kenyon C. J.* said (*inter alia*), that even if no bankruptcy had intervened in this case, this warrant could not have been supported, because it directs a seizure of the goods of *Dormer* generally, whereas the excise laws only give a lien on those goods that are liable to the duties, and the materials and utensils for making the same. *6 T. R. 436.*

By 32 G. 3. c. 10. Where any person against whom any warrant of commitment in execution, commonly called a *body warrant*, shall, by any three commissioners of excise or

Offenders removing out of the jurisdiction where they were convicted.

by any justice, under any act relating to duties of excise, be issued, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the commissioners, &c. granting such warrant, any three commissioners or a justice of the peace where such person shall so be, on proof being made on oath of the hand-writing of such commissioners or justice granting such warrant, may indorse the same, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same within such jurisdiction, and to convey such offender before the commissioners or justice who indorsed the same, or some other justice of the county, &c. where such warrant was indorsed; who may, by indorsement upon such warrant, commit such offender to the common gaol or house of correction of the county, riding, or place, where such warrant shall be executed, according to the exigency of such warrant, there to remain until delivered by due course of law. *f. 1.*

And no action shall be brought against any person who shall indorse such warrant by reason thereof; but any person may bring his action against the commissioners or justice who originally granted such warrant, in the same manner as if this act had not been made. *f. 2.*

Summoning
witnesses.

By the 7 & 8 *W. c. 30.* The commissioners and justices upon information before them, may summon witnesses (*L.*) to appear before them at a certain day, time and place to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance, any shall refuse to give evidence, he shall forfeit 10*l.* *f. 24.*

Officer on trial
need not pro-
duce his com-
mission.

If upon any trial in matters of customs or excise, any question shall arise concerning the keeping of any office of excise, or concerning any person's being an officer, proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. 6 *G. c. 21. f. 24.* 11 *G. c. 30. f. 32.*

Proof to lie on
the owner.

By 12 *G. c. 28. f. 8.* If any foreign goods shall be seized and any dispute shall arise whether the excise or other inland duties shall have been paid, or the goods legally condemned, or compounded for, or condemned, or concerning the place whence such goods were brought, the proof shall lie on the owner or claimer, and not on the officer *r.* And by the 23 *G. 3. c. 70. f. 35.* if any goods liable to duties of excise or inland duties shall be seized, or if any action shall be brought by the owner or claimer of any such goods against any officer of excise or his assistant, proof of payment of the duties shall lie upon the owner or claimer, and

and not on the person who seized the same, or against whom the action shall be brought.

M. 18 G. 3. Henshaw v. Pleasance. An action of trespass was brought against certain officers of excise for seizing a quantity of soap, supposed to be irregularly lodged and concealed; which came to be tried before *Blackstone J.* at the sittings in *London* during the last Trinity term. It appeared in evidence that a warrant grounded on an oath of suspicion was granted to the defendants by the commissioners of excise on the 25th of *February* 1777 to seize the said soap; that on the 26th, upon the return of the seizure, an information was ordered by the commissioners against the plaintiff; that on the 28th *Henshaw* brought his action and sued out process against the defendants; delivered declaration on the 19th of *April*; and, upon the plea of Not Guilty, gave notice of trial on the 25th of *April*, for the sittings after that term, being the 14th of *May*. On the 10th of *May*, and not sooner, notice was given to *Henshaw* of the information, with a summons to attend the hearing before the commissioners on the 13th, when the commissioners wished to postpone giving any opinion till they had considered of the evidence; but the solicitor of excise pressed to have it determined immediately, in order, as he expressed it, to get start of the action which was to be tried on the morrow; which drove the plaintiff into a consent to postpone the trial of his cause. And on the 16th the commissioners convicted the plaintiff in the penalty of 10cl. (which they mitigated to 4os.) besides the forfeiture of the soap. It was insisted on the trial of the cause, on the 10th of *June* following, first, that this condemnation was conclusive evidence to the jury; and secondly, if it was not so, yet that the *onus probandi*, that the soap had paid the duty, lay on the plaintiff. The judge permitted the condemnation, which was founded principally on the evidence of the defendants (together with others), to be read in evidence as a fact, but left it under all its circumstances to the jury, to consider what weight it ought to have; informing them, that this being a condemnation at the board of excise, and not in the exchequer, was not conclusive evidence; and that in an action of trespass the *onus probandi* of the soap's not having paid the duty lay upon the officers who seized it. Upon which the jury found a verdict for the plaintiff. It was moved for a new trial, upon this supposed misdirection of the judge. But by *De Grey Ch. J.* and the other two justices: The judge's direction was right. It was determined lately in the case of *Scot* and *Shearman*, and has been uniformly so held for above a century, that a condemnation of goods in the exchequer is conclusive evidence against all the world. But the reasons

and authorities relied on in that and all the other cases extend only to that court, being the king's supreme court of revenue, and not to the inferior jurisdictions of the boards of excise and customs. As to the other point, it was expressly determined in the case of *Salaman v. Gordon*, (ante) and we have no reason to alter the opinion then given. And the rule for a new trial was discharged. 2 *Black. Rep.* 1174.

Sworn values.

One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, and cattle mentioned to have been seized in the information exhibited before the justices to view the same, and make return of the species, quantity, quality, and value; and after condemnation the same shall be sold where and when the commissioners shall think proper. 12 *G. c.* 28. s. 16.

Mitigation.

The justices, commissioners, or sub-commissioners respectively where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers or others as were employed therein, to be to them allowed by the said justices. 12 *C. 2. c.* 24. s. 46.

Mitigate] But it is not necessary in the mitigation to mention or distinguish so much for the offence, and so much for the charges; after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum as both when added together amount unto; as suppose the justices intend that the defendant shall pay 10l. for the offence, and 40s. for the charges, the best way will be to make their mitigation to 12l. without particularly mentioning that 10l. thereof is for the offence, and that the 40s. is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw. Exc.*

There is no appeal directed in the said statute of 12 *C. 2.* from judgments given by the justices of the peace; for whereas it is enacted, in the said statute, that *if the party find himself aggrieved by the judgment given by the sub-commissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally as well to the judgments given by the justices as to judgments given by sub-commissioners, they must be understood as limited and restrained to such judgments only as are given by sub-commissioners, in whom the parliament (it seems) did not so entirely confide as in the justices, but have made the afore-

men-

mentioned distinction between the judgment of the one and of the other; which must be observed and pursued; and therefore, generally there lies no appeal to the quarter sessions from the judgment given by *the justices*, in matters relating to the excise. *Shaw. Exc.*

In the case of *R. v. Justices of Surrey, E. 28 G. 3.* it was determined that no appeal lies to the sessions from a conviction by two justices for an offence under 25 G. 3. c. 72. s. 9. for printing cotton before it was measured and marked by the proper officer of excise, according to the directions of the act; notwithstanding the act contains a general clause of reference to all former excise laws, and incorporates all the powers and provisions of 12 C. 2. c. 24. and of all other laws relating to the excise or inland duties under the management of the commissioners of excise for the managing, mitigating, and adjudging the duties or penalties granted by this act. And the party does not, by this construction, lose the benefit of the power of mitigation; for the two justices will have the power of mitigating whether the appeal lie or not. 2 T. R. 504.

Nevertheless, in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 C. 2. c. 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or sub-commissioners, and given security to the commissioners of appeal or justice of the peace, where the cause is to be finally adjudged, for such fine, forfeiture, and penalty, as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally prosecuting shall pay double costs; but if the first judgment be affirmed, the party appealing shall pay the like costs to the commissioners. s. 19.

By the same statute, all differences, appeals, and complaints about the excise shall be heard in their proper county, and not elsewhere. s. 22.

And appeals within *London* and the limits thereof shall be within two months after the first judgment, and notice thereof given or left at the dwelling-house of the party; in all other places in four months, and not otherwise. s. 26.

For preventing vexatious suits against the officers of excise and their assistants; if any information or suit be commenced and brought to trial, on account of the seizure of any goods or of any vessel, boat, horse, or other cattle, or of any carriage used in removing or carrying the same, wherein a verdict shall be found for the claimer thereof, and it shall

Actions brought
against the of-
ficers.

shall appear to the judge that there was a probable cause of seizure, he shall certify the same upon the record; and in such case the claimant shall not be entitled to any costs of suit, nor shall the person who seized the same be liable to any action, indictment, or other suit or prosecution on account of such seizure; and if any action, indictment, or prosecution shall be commenced and brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, and the judge shall certify on the record that there was a probable cause of seizure, the plaintiff, besides the thing so seized or the value thereof, shall not be entitled to above 2d. damages, nor to any costs of suit, nor shall the defendant be fined above 1s. 23 G. 3. c. 70. s. 29.

And no writ or process shall be sued out against, nor a copy of any process served upon, any officer of excise or his assistant for any thing done in the execution of his office, until one calendar month's notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue out such writ, &c.; in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the said attorney or agent: and a fee of 20s. and no more shall be paid for preparing and serving such notice. s. 30.

Notice.

Until one calendar month's notice] In the case of *Castle* and another, v. *Burditt* and others, E. 30. G. 3. it was determined that where the law requires a month's notice to be given of an action intended to be brought, the month begins with the day on which the notice is served. For where computation of time is to be made from an act done, the day on which the act is done is to be included in the reckoning. 3 T. R. 623.

M. 33. G. 3. *Daniel v. Wilson*. This was an action of trespass for an assault committed by an excise officer; the question was, whether he were entitled to a month's notice before the bringing of the action by the above act, 23 G. 3. c. 70. s. 30. No notice was given in this case, and it was contended that it was not necessary, the defendant, at the time of the assault, *not being in the execution of his office*. As to which it appeared that the defendant, just before the assault in question, had been in pursuit of some smugglers, and had, after a violent struggle with them, in which he had been severely beaten, taken some run goods, but the smugglers themselves had retired: in about five minutes after, the plaintiff, who had in truth no concern with the smugglers, or with any smuggled goods, passed by the defendant with some-

something upon his back, and being unknown to the defendant, and suspected by him to be one of the gang of smugglers, was ordered to deliver what he was carrying; he answered, that he had nothing to deliver, being only a fisherman; whereupon the defendant assaulted and struck him. At the trial at *Hereford*, *Perryn B.* was of opinion that the case fell within the meaning of the statute requiring notice, and for want of it nonsuited the plaintiff. *Leycester* moved to set aside the nonsuit, on the ground that the assault could not be said to have been committed in the execution of the defendant's office. But by the *court*, the act was clearly intended to protect such officers as, acting in the *bonâ fide* discharge of their duty, were inadvertently guilty of excesses beyond the strict line of their duty. Here an affray had just taken place with some smugglers, when the plaintiff passed by under circumstances of suspicion; he refused to stand search; and though the defendant's conduct thereupon was perhaps too hasty, yet it manifestly appears that he acted in the supposed execution of his office, however illegally; and that is sufficient to bring the case within the protection of the statute. Rule refused. 5 T. R. 1.

The officer, or his assistant, may at any time within such month, tender amends to the party complaining, or to his agent or attorney; and if not accepted, he may plead such tender in bar of the action, together with the plea of Not Guilty, and any other plea with leave of the court: and, if upon issue joined, the jury shall find the tender to have been sufficient, they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuited, or discontinue his action, or judgment shall be given for the defendant upon demurrer, the defendant shall be entitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends or not sufficient were tendered, and also against the defendant on such other pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, with costs of suit. 23 G. 3. c. 70. s. 31.

If he shall neglect to tender amends, or shall have tendered insufficient before the action brought, he may by leave of the court at any time before issue joined pay into court such sum as he shall see fit. s. 33.

The plaintiff shall not be permitted to produce any evidence of the cause of action, except such as shall be contained in the notice: nor shall recover, excepting he prove notice given. s. 32.

And if an action or suit shall be brought against any officer of excise or his assistant for any thing done in the execution of his office, it shall be brought within three months
next

next after the cause of action shall arise, and not afterwards; and shall be laid in the proper county; and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall be nonsuited or discontinued, or if upon verdict or demurrer judgment shall be given against him, the defendant shall recover treble costs.

f. 34.

Felonies relating to the excise, where to be tried.

Offences relating to the excise made felony by any act may be tried in any county: but the attainder shall work no corruption of blood, or forfeiture of lands. 19 G. 2. c. 34.

f. 5.

In whose name proceedings shall be *.

By the 46 G. 3. c. 112. reciting, that whereas by the 26 G. 3. c. 77. f. 13. it was enacted that no person should commence, prosecute, enter, or file any action, bill, plaint, or information in any of his majesty's courts against any person for the recovery of any fine, penalty, or forfeiture, made by any act relating to the customs or excise, unless in the name of the attorney-general, or of some officer or officers of the customs or excise; and if any action, &c. were commenced, &c. in any other name, the same should be void, And the court in which such action, &c. was commenced, &c. should not suffer any proceedings to be had thereon; it was enacted, that the same rules should extend to all proceedings in respect of any such fine, &c. incurred under any act relating to excise, before the commissioners of excise, or before any justice of peace.

Perjury.

By f. 3. of the same act it is also enacted that any person who shall be convicted of wilfully taking a false oath in any of the cases in which an oath is by any act relating to the duties of excise directed or required to be taken, shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Alehouse-keepers harbouring offenders.

Any alehouse-keeper knowingly receiving or harbouring an absconded person, against whom a process of arrest hath issued, and the sheriff has returned *non est inventus*, for any offence against the laws of excise, or of the customs, after six days notice of such absconding in two successive gazettes, and by writing fixed on the door of the parish church where he last dwelt, shall forfeit 100l. and have no license for the future. 9 G. 2. c. 35. f. 30, 31.

Concealing prohibited or run exciseable goods.

If any person shall knowingly conceal, or suffer to be concealed, any prohibited or run goods liable to the duties of excise and inland duties, he shall (whether he claim any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. f. 16.

And moreover, in case any of the goods, in respect whereof any duty of excise is imposed, shall be fraudulently concealed with intent to defraud the revenue, such goods shall be forfeited together with all packages containing the same, and shall be seized by any officer of excise: And if any such officer shall suspect that any such goods shall be concealed in any place in *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath by such officer before the commissioners, or any two or more of them; or if such place be in any other part of *Great Britain*, on oath as aforesaid before one justice for the county, &c. or place, where such officer shall suspect the same to be concealed, setting forth the ground of his suspicion; then the said commissioners, or any two of them, or the said justice may, if they judge it reasonable, by special warrant under hand and seal, authorize such officer by day or night, (but if in the night in the presence of a constable or other peace officer,) to enter into every such place and to seize all such goods so forfeited with their packages; and every such peace officer is, on request by such officer of excise, to go along with him and be present at the execution of such warrant; and if any person shall obstruct any such officer so authorized, or any one acting in their aid in executing such warrant, he shall forfeit 100*l.* 42 G. 3. c. 93. f. 17.

Concealing excise goods.

Officers may enter suspected places.

Penalty on obstructing such officer.

And where any goods are forfeited under any of the excise laws, all the moveable casks or other packages containing the same, and also every vessel, boat, cart, carriage, and all cattle used in the removal thereof shall be forfeited, and the same together with such goods, may be seized by any officer of excise. f. 18.

When goods are forfeited, the packages, carriage, and cattle are also forfeited.

By 49 G. 3. c. 81. f. 8. It is enacted that where any vessels would if found be liable to forfeiture for want of entry having been made, or notice given thereof, or for being private or concealed, all the utensils used or employed or fit or proper to be used or employed, in the manufacture of any exciseable commodity in any private or unentered room or place where any such vessel shall be found, or have been used, shall be forfeited; and all such utensils may be seized by any officer of excise.

Utensils.

If any trader subject to the survey of any officer of excise, and who is required to keep just scales and weights, shall before or after or in weighing his stock, put or suffer to be put any other substance into the commodity so to be weighed, whereby such officer may be hindered or prevented from taking a just account thereof, or shall forcibly obstruct or hinder, or by any art, device, or contrivance, prevent or impede such officer in taking such account, he shall forfeit 100*l.* 26 G. 3. c. 77. f. 8.

Using art to deceive officers in taking the weight of stock.

And

False scales and weights may be seized.

And all such traders, who shall, in weighing their stock, make use of any false, unjust, or insufficient scales or weights, to the intent to defraud his majesty of the duties, shall forfeit the same, which may be seized by any officer of excise. 28 G. 3. c. 37. s. 15.

Permit for removing exciseable goods.

The officers, in their permits for removing exciseable goods, shall express as well the time for which they shall be in force for removing such goods as the time within which they shall be received into the stock of the person to whom they are sent; and if not removed within the time limited (except in case of unavoidable accident; or, in default of such removing, if the permit shall not be returned to the officer who granted the same, the person out of whose stock they were to be removed, shall forfeit treble the value of the goods; and, if not received into stock within the time limited by the person to whom they were permitted to be sent, they shall be deemed goods removed without a permit. 21 G. 3. c. 55. s. 27, 28.

Constable to be assisting.

If on request made by any officer of excise to a constable to go along with him and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse, or shall not go along with him, and shall not be present at the doing thereof; he shall forfeit 20l. 11 G. c. 30. s. 31.

Obstructing officer.

If any person shall oppose, molest, hinder, or obstruct any officer of excise in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10l. 6 G. c. 21. s. 7.

And actions of assault upon any officer of excise may be tried in any county. 9 G. 2. c. 35. s. 26.

If any person shall disturb or oppose any excise officer in the execution of the powers and authorities by this act granted, or any or either of them, except where other penalties are by the act provided, he shall forfeit 200l. 42 G. 3. c. 38. s. 35. And the same penalty is inflicted by 43 G. 3. c. 81. s. 16. in relation to that act.

Further penalties are imposed by many acts for assaulting, resisting, opposing, molesting, obstructing, or hindering officers of excise in the due execution of their duty, which are inserted under their respective heads.

Officer not to be a dealer.

If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50l. 12 G. c. 28. s. 7.

Officer taking a bribe.

No sworn gager, or other officer, shall take any bribe for any matter relating to the excise; on pain of 10l. 15 C. 2. c. 11. s. 16.

And a further penalty upon such officer is inflicted in divers instances hereinafter mentioned.

By the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it, he shall forfeit 500*l.* *f.* 40.

No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise or any part thereof shall by word, message, or writing, or in any other manner endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of a member of parliament; on pain of 100*l.*, half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 W. c. 20. *f.* 48.

Officer meddling in elections.

By the 52 G. 3. c. 143. *f.* 10. That if any person shall, with intent to defraud his majesty, falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, &c. or willingly assist in falsely making, &c. any debenture, or any certificate for the payment or return of any money, or any part of any such debenture or certificate, or any signature thereon, in any case in which such debenture or certificate is by any act or acts of parliament relating to the duties of customs or excise required or directed to be given or granted; or shall wilfully, with such intent as aforesaid, utter, publish, or make use of any such debenture or certificate, or part thereof, so being wholly or in part falsely made, &c. he shall on conviction be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Punishment for forging debentures for return of money from duties of customs or excise.

Se&t. IV. *Warehousing Goods.*

[43 G. 3. c. 132.—45 G. 3. c. 87.—46 G. 3. c. 137.—49 G. 3. c. 106.]

By the 43 G. 3. c. 132. A great change was introduced into the law of customs and excise, by enabling those who imported goods to land them, and warehouse them under certain regulations, before any duty shall have been paid. To this act were annexed schedules A. B. C. D. and E. naming the several kinds of goods so permitted to be landed and warehoused. And by *f.* 10. of the act, the commissioners of the treasury were empowered to extend the provisions of it to any other goods, which to them seemed proper to be included. By *f.* 1. it is made lawful for the importer, proprietor, or consignee of any of the goods described in the schedule (A.) being legally imported into the port of *London*,

to lodge and secure the same under the joint locks of the crown and the merchant; in any warehouse in the *Isle of Dogs*, belonging to the *West India* company, without payment, at the time of the entry, of the customs or excise due: provided, however, that the commissioners of the treasury shall be first satisfied that the warehouses are in a fit state to receive the goods.

f. 2. Relates to the *London Dock* company.

f. 3. Enables the commissioners of the customs, or any four of them, to allow, under such regulations as they may think fit, the goods in schedule C. to be landed in places by them approved, before payment of the duties of customs: bond being given by the proprietor, &c. &c. to the king with one surety, to be approved by the collector or comptroller of the port of *London*, in double the amount of the full duties, with condition to export duly under such rules of this act as may be applicable thereto, or that the full duties due on the importation shall be paid within twelve months from the date of the first entry of the goods.

And by *f.* 3. The importer, &c. of the goods in table D. mentioned, may (without previous payment of the duties thereon) land them and secure them under the joint locks of the crown and merchant, in such warehouses as the commissioners of the customs, or any four of them, may think proper for lodging such goods therein, bond being given as before mentioned.

By *f.* 6. The importer, &c. of the goods mentioned in table E. legally imported into the port of *London*, may lodge the same in warehouses provided for the purpose, under the said joint locks, without payment of duties at the time of the first entry.

By *f.* 7. These warehouses are to be first approved by the commissioners of the treasury, or any three or more of them, as being fit for the reception of such goods.

f. 8. Saves the regulations of other acts relating to importation and exportation; and *f.* 9. provides that the commissioners of the treasury, or any three of them, may extend the provisions of this act to any other goods, not enumerated in the annexed tables; and *f.* 11. confines the regulation of the act to the warehousing of goods, enumerated in the tables of this act, or by the said commissioners in the *f.* 9 mentioned.

By *f.* 12. Before any goods, &c. shall be lodged or otherwise secured according to this act, they shall be duly entered with the proper officer of the customs, and regularly landed and he shall as soon as conveniently may be examine the same and take a particular account thereof, to be regularly entered in a book to be kept for that purpose, and the con-

tent

tents shall be marked by or under his inspection, distinctly, on each package, when practicable; and no allowance on any account shall be made unless claimed at the time when the goods are examined.

By *f.* 13. It is further enacted, that no goods lodged and secured according to this act, shall be taken out of any such warehouse or place, but upon the following conditions: — If for exportation to foreign parts, the proprietor, &c. may take them without payment of any duty, provided that before taking them thence he make due entry thereof with the proper officer of the customs, and together with the person taking charge of the ship or vessel, and one other sufficient surety, to be approved by the collector or comptroller, at the port of exportation, enter into bond to his majesty, in treble the value, with condition that the said goods shall be landed at the places for which they were entered, and that no part thereof shall be re-landed in *Great Britain*, or landed in *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, or *Faro*.

The section then prescribes certain periods of time within which the goods are to be landed at certain places, and the signing of certificates of landing: it then proceeds to enact that if any goods so warehoused and secured, are to be taken away, the importation duties thereon shall be first paid, without any deduction for waste, excepting as is provided in *f.* 12. 14. of this act. But if by reason of weather or time the goods shall have increased in weight, the duties chargeable on such increased weight shall be paid together with those originally due. — Provided that no bond shall be required upon the exportation of any spirits.

And by *f.* 14. An allowance shall be made by the proper officer of the customs or excise, to the importer, proprietor, or consignee of any coffee or cocoa nuts so warehoused, at the rate of 2lbs. for every 100lbs. as a full compensation for all loss, damage, or waste whatsoever.

By *f.* 15. If any goods so warehoused or secured shall be embezzled, or fraudulently hid, or removed from the warehouse or place, they, together with the packages containing them, shall be forfeited, and may be seized by any officer of the customs or excise, in cases where that revenue is concerned; and the person so embezzling, &c. or aiding therein, or to whose hands they shall knowingly come, shall be subject to the like pains and penalties as if they had been fraudulently unshipped, or landed without payment of duty.

By *f.* 16. In case of destruction of such goods so warehoused and secured, by fire, no action shall be brought against the king, or commissioners of customs or excise, or officer thereof, or other person employed by the commissioners, on

account of such destruction, nor shall duty be paid for any goods so destroyed.

By *f.* 17. The expence of warehouse rent and other charges shall be paid by the importer, &c. of such goods; and if warehouses be provided by the crown, the importer, &c. shall pay warehouse rent for such goods according to the usual rate of such rent for the like articles (C.) (D.) (E.) paid at the port of importation; the rate to be fixed by the commissioners of the customs with the consent of the commissioners of the treasury, or any three of them.

By *f.* 18. The warehoused goods shall not be exported or entered for exportation in any vessel under 70 tons burthen, not repealing, however, the acts relating to the tonnage of ships in cases of exportation.

By *f.* 19. No goods shall be taken from the warehouse or place in which they have been so lodged and secured, in any other than the original packages; or in one entire quantity equal thereto and contained in a similar package. Nor shall brandy, rum, geneva, spirits, or aqua vitæ, be taken out for exportation in casks less than 100 gallons at least, nor wine less than 45 gallons.

But by *f.* 20. Coffee and cocoa nuts may be repacked for exportation, in any package, if the repack be not less than 1 cwt.

By *f.* 21. Where the duties have been secured by bond, and imported in bulk, no goods shall be delivered except in the whole quantity, or not less than one ton weight, unless by previous special leave of the commissioners of the customs, or any three of them, and previously marked according to their directions.

And by *f.* 22. Before any goods, &c. (except sugar) lodged and secured as aforesaid, shall be delivered thence for exportation, the exporter or proprietor shall make due entry thereof with the officer of the customs, and shall pay down in ready money, without any discount or abatement, the full amount of the additional duties of customs granted by the 43 G. 3. c. 70. which would have been due if the goods had been taken out for consumption in *Great Britain*.

By *f.* 23. When any goods, &c. are to be taken out for exportation, the proper officer of the customs shall re-examine them; and if it appear on such re-examination that the quantity is less than the quantity taken by the proper officer by virtue of this act at the first examination thereof, then the importer, &c. thereof, or the person intending to take out the same, shall, before delivery from the warehouse for that purpose, make due entry of such deficiency, and pay the full duties thereon, except as by this act is otherwise provided.

Goods exported to be re-examined, and duty to be paid for deficiencies.

By *f.* 24. On the shipping for exportation to foreign parts of any such goods, &c. so warehoused, &c. according to this act, the searcher, or other proper officers of the customs, shall, after due examination thereof, give without fee or reward to the exporter thereof, or his agent, a correct certificate, specifying the quantity, quality, and species of the goods, &c. so shipped, which certificate shall afterwards be delivered to such person, as the said commissioners shall direct, that the same may be entered in a book provided for the keeping such accounts as the said commissioners may think necessary, with the importer, &c. of goods, &c. warehoused, &c. according to this act; which certificate, as far as the same will apply, shall go in discharge of the accounts of such goods, &c. or in discharge, as far as the same will apply, of the bond given by any such importer, &c. for the payment of the duties on such goods, &c.

Goods exported, a certificate to be granted by the proper officer in discharge of importer's account.

By *f.* 25. If any goods, &c. on which the full duties shall have been paid, and afterwards taken from any warehouse, &c. where lodged, &c. according to this act, shall be duly exported, the exporter thereof shall be allowed such drawbacks of the duties of customs as would have been allowed on the exportation of any such goods, &c. in case this act had not been made; and also such drawback of the duties of excise with respect to any wine on which the full duties of excise shall have been paid; provided the exportation be within one year from the time of payment of such full duties.

Drawbacks to be allowed on goods where full duties have been paid, in certain cases.

By *f.* 26. Nothing in this act shall be construed to extend to prevent rum of the produce of the *British* plantations, warehoused under this act, from being delivered from such warehouse for the purpose of being shipped as stores without payment of any duty of customs, subject nevertheless, as far as the same are applicable, to all the conditions, &c. required by any acts in force on or immediately before the passing of this act.

Rum may be shipped as stores without payment of duty.

By *f.* 27. If any goods, &c. warehoused according to this act, shall, after entry for exportation, be fraudulently unshipped or relanded, except by necessity or distress, to be proved to the satisfaction of the said commissioners, they shall be forfeited, and seized by any officer of the customs.

Goods, after having been entered for exportation, if fraudulently relanded, subject to forfeiture

And by *f.* 28. Where by this present act, or any other in force at the time of passing it, any goods which shall have been shipped for exportation to foreign parts, shall be liable to forfeiture on account of the same being unshipped or relanded, then the vessel out of which they shall be so unshipped or relanded, shall be subject to forfeiture, and shall be seized by any officer of the customs or excise, in cases where that revenue is concerned: Provided always, that where it

Vessels, out of which goods entered for exportation have been relanded, are subject to forfeiture, &c.

shall be proved to the satisfaction of the commissioners of the excise, as the case may be, that such goods either did not form any part of the cargo, or were of small value, and that from the nature and quantity thereof, and the circumstances attending the unshipping or relanding thereof, the same was done without the privity or knowledge of the master, the said commissioners may remit such forfeiture, and declare the seizure to be void; and in such case no person whatever shall be entitled to bring or maintain any suit or action on account of any such seizure.

Goods, if not taken out of warehouse within a limited time, to be sold.

By *f.* 29. The importers, &c. of any goods, &c. which shall have been lodged in any warehouse, &c. provided according to this act, or otherwise secured, shall within fifteen calendar months to be computed from the day on which such importers, &c. thereof shall have made the first entry thereof, clear out of such warehouses or places either for exportation, according to this act, or to be consumed in *Great Britain*, all such goods, &c.; and in case such importers, &c. shall neglect, the said commissioners of the customs may cause all such goods, &c. to be publicly sold or exposed to sale; and after such sale the produce thereof is first to be applied towards the payment of the freight, prime, and charges of warehouse room, and other charges that shall arise thereon; next the duties of customs and excise; and the overplus, if any, to be paid to the proprietor or other person authorized to receive the same; provided that no such goods, &c. shall be so sold, unless a price can be obtained for them equal at least to the full amount of all duties of customs and excise charged and chargeable thereon, together with the expences thereon; but if such price cannot be obtained, then, and in such case, all such goods, &c. shall be effectually destroyed, by and in the presence of the proper officer of the customs, and also of the officers of the excise, in cases where the revenue is concerned, who are hereby authorized and required to destroy the same accordingly; and the proprietor of any such goods, &c. shall have no claim, either in law or equity, to the value of such goods, &c. or any part thereof, so destroyed.

Compensation to be made to officers.

By *f.* 30. The commissioners of his majesty's customs are authorized and required to make such allowance to the present officers, clerks, and all other persons employed in the service of the customs, whose income shall be reduced by the operation of this act, in lieu of and by way of compensation for the same, as they in their discretion (having regard as well to the creditable subsistence of the officers, as to public economy) shall judge necessary: Provided always, that nothing in this act contained shall repeal or in anywise alter the duties of package, scavage, balliage, or portage, or any other

Preserving certain rights.

other duties payable to the mayor and commonalty and citizens of the city of *London*, or to the lord mayor of the said city for the time being, or to any other city or town corporate, or to repeal or in any ways alter the prize of wine, the duty called butlerage, or any other special privilege or exemption to which any person, bodies politic or corporate, is or are now entitled by law; but the same shall be continued as heretofore.

f. 31. Saves the provisions of the 39 G. 3. c. 69.—
42 G. 3. c. 113. and 39 & 40 G. 3. c. 47.

And by *f. 32.* Before any goods, wares, or merchandize, subject to a duty of excise, on the importation thereof, shall be unshipped or landed for the purpose of being warehoused before payment of the duties, the importer or proprietor shall make entry thereof in writing with the proper collector of excise, specifying the name of the vessel, and the master, the number and marks of the casks, cases, bags, boxes, or other packages, the kind or species of goods, &c. contained in each, and at what port or place the same was loaded.

Entry to be made of excisable articles imported before landing.

And by *f. 33.* No foreign brandy, rum, geneva, spirits, or aqua vitæ shall be warehoused before payment of the duties, unless imported in casks of 100 gallons each at least; nor any foreign wine before payment of duty, unless imported in casks of 45 gallons each at least; nor shall any coffee or cocoa nuts before payment of duty, unless contained in casks, bags, boxes, or other packages of at least 112lb. net weight each.

Prescribing size of casks and packages for spirits, wine, and coffee.

And by *f. 34.* Before any such goods, &c. subject to any duty of excise, shall be allowed to be warehoused before payment of the duties, sufficient security shall be given, to be approved by the commissioners of excise, or the person appointed by them, which security is to be taken by bond in double the value of the duties charged or chargeable on such goods, &c. for payment of all the said duties respectively, before the same shall be taken out of any warehouse in which they shall have been lodged under this act, for home consumption; or if not taken out of any such warehouse for home consumption on payment of the duties, or for exportation within one year from and after the day of the date of the bond so given, then to pay all the duties on the said goods, &c. at the end of the said year, together with all charges that may be incurred by the officers in respect of such goods, &c.

Bond to be given for excisable commodities.

By *f. 35.* No such goods, &c. subject to excise, shall be unshipped or landed, and lodged or deposited in any such warehouse without a warrant from the proper collector of excise, nor without the presence of an officer of excise; and if any such shall be so unshipped without such warrant or

Warrant from the collector of excise to be obtained before landing or warehousing.

without such presence, they shall not be allowed to be warehoused under this act, but be subject to forfeiture as by any laws of excise now or hereafter to be made.

No two articles subject to different duties of excise to be warehoused together.

And by *f. 36.* No goods, &c. subject to different duties of excise, shall be knowingly lodged in one and the same apartment in any such warehouse, on pain of forfeiture of all such goods, &c. together with the packages so deposited as aforesaid; all which shall be seized by any officer of excise.

Goods to be stowed so as to afford access to the packages.

By *f. 37.* All goods, &c. so secured shall be deposited in such manner as that easy and convenient access may be had to every cask, case, or other package for the purpose of examining and taking a true account of the contents thereof; and if the owner or proprietor, or any warehouse-keeper or agent, shall neglect or refuse so to deposit the same, or cause the same to be so deposited as hereby directed, at their own charge they shall for every such neglect or refusal forfeit fifty pounds.

Notice to be given of taking goods out of warehouse.

By *f. 38.* Before any such goods, &c. subject to excise, shall be taken out of any such warehouse as aforesaid, either for home consumption or exportation, the importer or proprietor thereof shall give at least 24 hours notice in writing to the proper collector or officer of excise, of his intention so to take out their goods, specifying in such notice the particular goods, &c. so intended to be taken out, the number, marks, and description of each package, and the kind of goods therein contained, the vessel by which imported, the particular warehouse in which deposited, and whether to be taken out for home consumption or for exportation; and if the same shall be intended for home consumption, then the excise duties thereon shall be paid down to the proper collector of excise, according to the account first taken on the landing thereof, before any such goods, &c. shall be taken out of any such warehouse; or if intended to be taken out for exportation without payment of duty, then the proprietor, &c. shall, before the delivery out of any such warehouse, give good security, to be approved by the commissioners of excise, or the person appointed by them for that purpose, by bond in double the value of the duties thereon for home consumption, that the same shall be duly shipped and exported to parts beyond the seas, and not be unshipped or put on board any other vessel or boat (unavoidable accident excepted), nor relanded in any place in *Great Britain*, or in the islands of *Jersey*, *Guernsey*, *Alderney*, *Sark*, or *Man*: Provided always, that nothing in this act shall extend to require any bond to be taken by the commissioners of excise in respect to the exportation of coffee or cocoa nuts.

By *f.* 39. No such goods, &c. subject to excise, shall be taken out of any such warehouse, either for home consumption or exportation, except in the presence of the proper officer of excise; and the removal and shipping of all such of the said goods, &c. as shall be intended for exportation, except coffee or cocoa nuts, shall be attended and be seen on ship-board by the proper officer of excise.

Goods to be delivered in presence of the officer.

By *f.* 40. All such goods, &c. subject to excise, which shall be taken out of any such warehouse for home consumption, shall be accompanied by an excise permit, granted according to the laws in that case provided; and if any such goods, &c., coffee and cocoa nuts excepted, shall be taken out of such warehouse for exportation, every part thereof shall forthwith, and without unnecessary delay, and in the presence of the proper officer of excise as aforesaid, be carried to and put on board the vessel in which the same are intended to be exported, and if any part thereof shall be altered after being delivered out of the warehouses, and before exported, or shall not be actually put on board such vessel, or if the whole or any part thereof shall, after being so shipped, be unshipped or put into any other vessel, or into any boat (unavoidable accident excepted), or shall be relanded in *Great Britain*, all such goods, &c. the shipping of which shall be so neglected, or which shall be altered in quantity or quality, or shall be unshipped or relanded, shall, together with the packages containing the same, be forfeited, over and above the penalty of the bond entered into in respect of the exportation thereof, and shall be seized by any officer of excise.

Goods for home consumption to be accompanied by permits, and those for exportation to be forthwith shipped.

By *f.* 41. It shall be lawful for the proper officer of excise to take a particular account of the quantity, quality, and species of all such goods, &c. subject to excise, which shall be proposed to be or shall be warehoused before payment of the duties by weight, gauge, tale, or otherwise, as the case may require, while the same shall be on shipboard, or while in any boat or vessel, or as soon as the same shall be landed, or whilst the same shall remain on any wharf, quay, or other place whatever, and also while the same shall be remaining in such warehouse as aforesaid, in order to ascertain and secure the excise thereon; and such officer of excise shall be permitted at any time to take out of every cask of any kind of spirits a sample not exceeding half a pint, and out of every cask or other package of coffee or cocoa nuts, a sample not exceeding one ounce; which samples shall be regularly marked and registered, and security kept by the proper officer of excise, until the goods, &c. to which the same particularly refers, shall have been legally delivered for home consumption or for exportation.

Officers of excise to take account before goods are warehoused, and take samples.

Importer or proprietor to take samples.

And by *f. 42.* The importer or proprietor of any such goods, &c. subject to excise, at any time in the presence of the proper officer of excise, may take out of each cask of any kind of spirits or wine, not more than half a pint; and out of every cask or other package of coffee or cocoa nuts not more than two ounces, provided that no more than two such last-mentioned samples shall be taken, except in any case where the former samples shall be returned.

Importer or proprietor may examine goods in the presence of the officers.

By *f. 43.* Every such importer or proprietor who may have occasion to examine any such goods, &c. to him belonging, shall, upon giving four hours notice in writing to the proper officer of excise, be permitted by him, with the concurrence and in the presence of the proper officer of the customs, to enter into and remain in such warehouse so long as shall be necessary, during the legal hours of business, for the purpose of examining such goods, &c. or for making such lawful alterations therein, or arrangements thereof, as may be necessary either for the security, or in order to the sale or legal disposal thereof: Provided always, that no such alterations or arrangements shall be made which may in any respect tend to lessen the duties, or to embarrass the taking and keeping a true account thereof.

Duty to be paid for deficiencies.

By *f. 44.* If the quantity of any such goods, &c. subject to excise, which at the full end of one year from the day of the date of the bond given to the excise in respect thereof, &c. shall have been duly delivered for home consumption, added to the quantity of such goods, &c. which within the like period shall have been duly exported, shall fall short of the actual quantity taken account of at the time of the importation thereof, then the importer or proprietor of such goods, &c. shall immediately pay to the proper collector of excise the whole of the excise duties in respect of the quantity so deficient; and upon the making of such payment, the bond given for the due payment of the duties as aforesaid shall be delivered up and cancelled.

Officers to take account of coffee and cocoa nuts.

By *f. 45.* The proper officer of customs and excise may take a true account of all coffee and cocoa nuts after the commencement of this act remaining in any warehouse in which the same shall have been lodged before payment of the duties; and if any such coffee or cocoa nuts shall not be duly cleared for home consumption, or for exportation, within one year after taking such account, the commissioners of the customs may direct the same to be sold towards satisfying the duties of customs and excise, and the charges attending such sales; and if any surplus shall remain after payment of such duties and charges, the same shall be paid to the owner thereof; provided, that if a price cannot be obtained for such coffee and cocoa nuts equal to the full amount of

the duties and charges, they shall be effectually destroyed in the same manner as is by this act directed in case of any goods, &c. required to be destroyed.

By *f.* 46. If any person shall molest or impede any officer of customs or excise in the due execution of the powers by this act granted to such officer or any or either of them, every person so offending shall forfeit 200*l.*

Penalty on obstructing officers of excise.

By *f.* 47. Nothing in this act contained shall repeal or alter any of the rules or clauses in force at or immediately before the passing of this act, for or in respect of tea, tobacco, or snuff, or rum, spirits, or aqua vitæ, of the produce of the *British* plantations in *America*.

Regulations respecting tea, tobacco, snuff, and spirits, where not repugnant to the act, not repealed.

And by *f.* 48. The several rules, &c. in force at or immediately before the passing of this act, whether in relation to the importation or exportation of any goods, &c. chargeable with duties of excise as aforesaid, or for the better ascertaining or securing those duties, not being expressly repealed, altered, or controlled by this present act, or repugnant to any of the provisions herein contained, shall also remain in as full force as if this act had not been made.

Provisions of former acts not to be altered.

By *f.* 49. All fines, &c. imposed by this act, shall be sued for, &c. as by any law of customs or excise, or by action of debt, &c. in any of his majesty's courts of record at *Westminster*; one moiety to his majesty, the other to him who shall inform or sue for the same.

Recovery and application of penalties.

By *f.* 50. Any action or suit against any person for any thing done in pursuance of this act, shall be commenced within three calendar months next after the fact committed, and not afterwards, and shall be laid in the county or place where the cause of complaint did arise, and not elsewhere and in every such action or suit may be pleaded the general issue, and this act and the special matter be given in evidence at any trial to be had thereupon; and if the jury shall find for the defendant, or if the plaintiff shall be nonsuited, or discontinue, after the defendant shall have appeared; or if upon demurrer judgment shall be given against the plaintiff, the defendant shall have treble costs; and have the like remedy for the same as any defendant had in any other cases to recover costs by law.

Limitation of actions.

TABLES referred to by this act.

TABLE (A.)

A List of Articles which may be secured in warehouses within the premises situated at the *Ile of Dogs*, and belonging to the *West India* Dock Company, without the duties due on the importation thereof being first paid:

Cocoa

Cocoa Nuts, Coffee, Sugar, not imported by the united company of merchants of *England* trading to the *East Indies* ;

Cotton Wool, Ginger, Indigo, Mahogany, Melasses, Pimento, Rum, imported from the *West Indies*.

TABLE (B.)

A List of Articles which (not being imported by the united company of merchants of *England* trading to the *East Indies*, or not being imported from the *West Indies*) may be secured in warehouses within the premises belonging to the *London Dock Company*, without the duties due on the importation thereof being first paid :

Rice, Tobacco, Wine, Brandy, Geneva, and other spirits.

TABLE (C.)

A List of Articles which (not being imported by the united company of merchants of *England*, trading to the *East Indies*, or not being imported from the *West Indies*) may be secured in places to be approved by the commissioners of the customs, without the duties due on the importation thereof being first paid :

Brimstone, Cork, Hemp undressed, Iron in Bars, Kelp, Mahogany, Pitch, Rosin, Staves, Tallow, Tar, Timber, Tow, Turpentine, Wood.

TABLE (D.)

A List of Articles which (not being imported by the united company of merchants of *England* trading to the *East Indies*, or not being imported from the *West Indies*) may be secured in warehouses to be approved by the commissioners of the customs, without the duties due on the importation thereof being first paid :

Skins, *videlicet*—*Indian* deer skins, half dressed or shaved.

Other skins and furs not tanned, tawed, or in any way dressed.

Spermaceti oil, head matter, train oil, and all other fish oil, blubber and whale fins of *British* fishing.

TABLE (E.)

A List of Articles which (not being imported by the united company of merchants of *England* trading to the *East*

Indies, or not being imported from the *West Indies*) may be secured in warehouses to be approved by the lords commissioners of his majesty's treasury, without the duties due on the importation thereof first being paid :

Almonds of all Sorts, Anchovies, Anniseed, Balsam Capivi, Barilla, Bees Wax, Bristles undressed, Cantharides, Carpets Turkey, Chip Hats, Clover Seed, Cochineal, Cotton Yarn, Cotton Wool, Currants, Elephants Teeth, Feathers for Beds, Figs, Ginseng, Gum Arabic, Gum Senega, Jalap, Jesuit's Bark, Indigo, Juniper Berries, Linen plain of all Sorts, except Sail Cloth, Manna, Mohair Yarn, Oil of Olives, Palm Oil, Salad Oil, Oil of Turpentine, Opium, Pruens, Quicksilver, Raisins of all Sorts, Rhubarb, Saffron, Sena, Silk Raw, Silk Thrown, Silk Waste, Smalts, Straw Hats.

By 45 G. 3. c. 87. It is enacted that any three of the commissioners of the treasury may by warrant under their hands and seals order and direct that any of the goods, &c. in tables (A.) (B.) to the preceding act annexed (except tobacco) and wine imported from the *West Indies*, may be landed and lodged in warehouses or otherwise secured under the joint locks of the merchant and the custom and also of the excise, where that revenue is concerned without previous payment of duties, at such port as to them may seem reasonable, though the warehouses, &c. required by that act be not built : (subject to the regulations of that act.)

By *f.* 2. Before such warehousing, bond shall be given with one surety in double the amount of the full duties due and payable on the said goods, &c. with condition that such goods, &c. shall be either duly exported as is by the said act directed, or that the full duties of customs shall be paid to the collector within 12 months from the date of the first entry thereof.

By *f.* 3. Every fire-place or stove in such warehouse shall be bricked up or destroyed, and the warehouses shall in all other respects, to the satisfaction of the proper officer of the customs, and excise (where concerned), be rendered secure from fire, to entitle the parties to exemption from duties in case of fire.

And by 46 G. 3. c. 137. *f.* 1. The benefits of the 43 G. 3. c. 132. and the 45 G. 3. c. 87. are extended to the goods in the tables (C.) (D.) (E.) of the 46 G. 3. c. 137. and also to hides and other articles which may be added to those tables by virtue of the said act of the 43 G. 3.

And

And by the 49 G. 3. c. 106. Certain further regulations are enacted relating to the time of clearing the warehouses, and paying the duties upon the goods warehoused under that act.

By the 50 G. 3. c. 64. Divers other regulations were enacted for the purpose of enabling persons to remove goods, &c. warehoused under the 43 G. 3. c. 132., and the 45 G. 3. c. 87. and 46 G. 3. c. 137. from the ports where such warehouses are, to any other port where they are allowed to be warehoused under the said acts. By §. 2. of the same act, the packages are to be marked, due entries are to be made, and certain bonds for true delivery of the goods, &c. and production of a certificate of such delivery: §. 3. prescribes certain duties to collectors and comptrollers: §. 4. provides for accidental delay in shipping for exportation: and §. 5. extends to the act, the provisions and authorities of the 43 G. 3. c. 132. The 52 G. 3. c. 142. §. 1. provides for the removal of goods from one bonding warehouse to another in the same port: §. 3. permits the warehousing of British plantation rum in any cask of 60 gallons: §. 4. provides that the officer may take samples: §. 6. extends to such rum or spirits, the provisions of the 50 G. 3. c. 64.: §. 7, 8, 9, 10, 11. contain regulations respecting the same: §. 12. permits coffee imported in packages of 100lbs. avoirdupoise, at least, to be warehoused in the same manner as coffee contained in bags, &c. of at least 112lbs. weight: §. 13. relates to penalties.

Sect. V. Of the several particulars under the management of the commissioners of the customs and excise.

It is proposed to omit all enumeration of the several duties imposed by the excise acts, since they are not only made up of many different charges, but are also every year varying in their amount and rate, so that such a description will probably be, within a few months, perfectly useless, and the space in this work occupied by it become a mere incumbrance. For the same reason the bounties and drawbacks will be no further noticed than as they may be connected with regulations which it is the duty of justices of the peace to enforce.

The last act which relates to the duties of customs is the 49 G. 3. c. 98. By that act the former duties are repealed, and the whole system of new duties brought together into one act: but that act contains few or no regulations which concern a justice of the peace, and therefore the several customs provisions remain in that respect, generally, as they were before that act passed. And it is much to be desired that both in the customs and excise the several acts relating

to them, and the penalties, forfeitures, rules, and directions could be well arranged and brought within the compass of one act. At present they are so numerous, and enactments relating to the same case are dispersed through so many different statutes, that it is not within the power of any but a lawyer (and perhaps not excepting even him) to comprehend their true meaning.

The principal act by which duties of excise are now collected is the 43 G. 3. c. 69. By the 43 G. 3. c. 81. war duties were added to those imposed by the former act; and by many subsequent statutes a great variety of new impositions have been added to those above alluded to.

It is proposed to arrange the matters relating to the excise under the following heads: *viz.*

- (1.) *Ale, beer, cyder, perry, mum, metheglin, and mead.*
- (2.) *Things sold by auction.*
- (3.) *Bricks and tiles.*
- (4.) *Candles.*
- (5.) *Coffee, tea, chocolate, and cocoa-nuts.*
- (6.) *Glass.*
- (7.) *Hops.*
- (8.) *Leather.*
- (9.) *Linen cloth, silks, cottons, and callicoes.*
- (10.) *Malt.*
- (11.) *Paper.*
- (12.) *Plate.*
- (13.) *Salt.*
- (14.) *Soap.*
- (15.) *Spirituous liquors.*
- (16.) *Starch, hair, powder, and stone blue.*
- (17.) *Stone Bottles.*
- (18.) *Sweets.*
- (19.) *Tobacco and snuff.*
- (20.) *Vinegar and verjuice.*
- (21.) *Wine.*
- (22.) *Wire.*

Sect. V. (1.) *Ale, beer, cyder, perry, mum, metheglin, and mead.*

[12 C. 2. c. 24. f. 29—33. 37. 39. — 15 C. 2. c. 11. f. 1. 6. 7. 11—14. 16. — 22 & 23 C. 2. c. 5. f. 10. 11. — 1 W. sess. 1. c. 24. f. 6. 7. 10. 11. 16. — 7 & 8 W. c. 39. f. 21—23. 25. 27. 46. — 8 & 9 W. c. 19. f. 2—7, 9. — 12 & 13 W. c. 11. f. 17. — 12 G. c. 28. f. 30. — 1 G. 3. c. 3 f. 9. 11. 13. 15. 16. 21. — 2 G. 3. c. 14. f. 2. — 5 G. 3. c. 43. f. 25. — 6 G. 3. c. 14. f. 8. — 22 G. 3. c. 68. f. 3—9. — 24 G. 3. sess. 2. c. 41. f. 7. 8. 11. — 25 G. 3. c. 73. f. 1. — 27 G. 3. c. 13. f. 5. 38. — 28 G. 3. c. 37. f. 21. — 32 G. 3. c. 8 f. 1. — 42 G. 3. c. 38. f. 9—16, 18. 20—25. 36. — 43 G. 3. c. 38. f. 19. 40. — 43 G. 3. c. 69. f. 12—14. — 43 G. 3. c. 81. f. 12.]

License for
brewing strong
beer.

By 43 G. 3. c. 69. Every common brewer of strong beer shall annually take out a license from the officers of excise, for which he shall pay according to the quantity of beer brewed by him within the preceding year, as specified by the act, ending 5th *July* in each year.

To be renewed
annually.

And every person who shall first become a common brewer of strong beer, for every such license 1l. 10s. and within ten days after the 5th of *July* next; after taking out such license, such further additional sum as with the said 1l. 10s. shall amount to the duty hereinbefore directed to be paid, according to the number of barrels of strong beer brewed within the preceding year. 43 G. 3. c. 69. *sched. A.* And if he shall neglect to take out such license, and renew the same annually, ten days at least before the end of the year, he shall forfeit 50l. 24 G. 3. c. 41. *sess. 2. f. 7.*

License for
brewing small
beer.

And every common brewer of table beer, not being a common brewer of strong beer, shall take out a license, and pay for the same yearly 1l.; which license shall be renewed annually in like manner, on the penalty of 10l. 43 G. 3. c. 69. *sched. A.* 24 G. 3. c. 41. *sess. 2. f. 7.*

License for
making mead.

By the 42 G. 3. c. 38. f. 18. No person not being a common brewer shall retail beer at any higher price than 1½d. the quart without entering into a recognizance and obtaining a license as a common alehouse keeper, under pain of forfeiting for each offence 50l. over and above any penalty imposed upon selling beer or ale without a license.

Persons in part-
nership.

Every maker of *metheglin* or *mead* for sale, shall take out a license, for which he shall pay 1l. and shall renew the same annually in like manner, on pain of 10l. *Id.*

But persons in partnership need only take out one license for one house. *Id.* f. 8.

Note:—By 43 G. 3. c. 81. *f*. 12. beer or ale above 18s. the barrel, exclusive of duty, shall be deemed strong beer, and at 18s. or under, table-beer; during the continuance of the act, which is to be in force twelve months after a peace.

When beer shall be accounted strong and when table.

Every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into *cyder* or *perry* for sale, shall make entry of his storehouses, cellars, and other places, at the excise-office within the district; on pain of 50*l*. 1 G. 3. c. 3. *f*. 21.

Dealers in *cyder* to make entry of their store-houses.

And by 6 G. 3. c. 14. Every factor or agent, taking any *cyder* or *perry* into his possession, shall, three days before he shall begin to dispose of the same, make entry in writing at the next office of excise of his name and the place where the *cyder* or *perry* is to be kept: and if he shall make use of any warehouse or other place, without having made such entry, he shall forfeit 50*l*. for every such place. And every such factor or agent shall be liable to all the regulations which any dealer in or retailer of *cyder* or *perry* is liable to by this or any other act now in force, for managing the duties on *cyder* and *perry*. *f*. 9.

Persons taking *cyder* or *perry* into their possession.

Every person who shall buy any *cyder* or *perry*, or any fruit to make into *cyder* or *perry*, and shall sell any *cyder* or *perry* so bought or made, by the hogshead or any greater or lesser measure; or in less quantities than 20 gallons at a time, whether the same be made from fruit of his own growth, or from bought fruit; shall be deemed a dealer in and retailer of *cyder* or *perry*. *f*. 11.

Dealers and retailers of *cyder* and *perry*.

Every such dealer in and retailer of *cyder* or *perry* made from fruit of his own growth shall be liable to all the regulations which any dealer in or retailer of *cyder* or *perry* is liable to by this or any other act now in force for managing the duties on *cyder* or *perry*. *f*. 13.

And to prevent frauds being committed by dealers and retailers or factors and agents in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged, it is enacted that if any such dealer, &c. shall cause such *cyder* or *perry* so to be removed from the maker to the person contracting for, or ordering the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee) signifying the quantity and number of casks or other package, and that the duties have been charged, he shall forfeit 50*l*. *f*. 15.

Cyder not to be removed till the duties are charged.

Provided

Drawbacks
allowed.

Provided always, that the said duties shall be drawn back on distillation into low wines and spirits; and if such *cyder* or *perry*, having paid the duties, shall afterwards, by being unfit for sale as *cyder* or *perry*, be charged with the duties on *vinegar*, three commissioners of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. *f. 16.*

Notice of erect-
ing and altering
tuns, &c. for
brewing beer or
ale.

By the 15 C. 2. c. 11. No common brewer, inn-keeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or sub-commissioners, or one of them, erect, alter, or enlarge any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50l. And every other person, in whose occupation any house, out-house, or other place shall be, where any such private tun, &c. shall be found, shall also forfeit 50l. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited, to be sold to the use of the poor. *f. 1.*

No tun, batch,
&c. to be altered
without notice.

By the 5 G. 3. c. 43. If any common brewer shall alter the position of any tun, batch, float, cooler, or copper after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at, in, or upon the dipping-place thereof; or shall by any other means prevent or hinder the officer from taking true dips and gages of such beer, ale, or worts; he shall forfeit 20l. *f. 25.*

Officer may en-
ter and examine
suspected places.

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion that any private back, tun, or other concealed vessel or receptacle, is used by any brewer, distiller, or maker of exciseable liquors, on request first made and cause declared, may break open the door or any part of such brewhouse, warehouse, or other room in his possession, and enter and break up the ground in such house, or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel or any pipe or conveyance leading thereto; and if he find any private pipe or other conveyance, he may search after and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request and with a constable, he may enter the same, and break open the ground or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or other vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 20l. 7 & 8 W. c. 30. *f. 27.*

No common brewer shall keep any pipe or other private conveyance from any copper in his brewhouse, except the regular discharge-pipes leading directly to his mash-tun, hop-back, back, or coolers; nor shall keep any fixed or other pipe or conveyance leading from any under-back, hop-back, back, or cooler, except such as without any private or concealed stop-cock therein or thereon, shall have a direct communication with the entered coppers, backs, coolers, or working tuns only, on pain of 200l. for every such pipe or conveyance. 8 & 9 *W. c.* 19. *f.* 4. 42 *G. 3. c.* 38. *f.* 15.

Private conveyances.

And the excise officer in the day time, and in the presence of a constable on request made and cause declared, may break up the ground in any common brewhouse or the ground near adjoining or any wall, partition, or other place, to search for any such private pipe or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, through or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. 8 & 9 *W. c.* 19. *f.* 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 50l. *f.* 6.

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are public and in open view, for letting his worts out of his copper into his public backs or coolers, and out of the same into his tuns, batches, or floats; or out of the tun into his cask. *f.* 7.

No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying off any beer or ale or worts in cask, on pain of 50l.; and every other person, in whose occupation any such place shall be, shall also forfeit 50l. 15 *C. 2. c.* 11. *f.* 1. 1 *W. f.* 1. *c.* 24. *f.* 11.

Private cellar.

By 42 *G. 3. c.* 38. *f.* 16. Every common brewer who shall lay off any beer, ale, or worts contrary to the 8 & 9 *W. 3. c.* 19. *f.* 2. shall for every such offence forfeit 100. See *post*.

If any person inhabiting in a market-town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, outhouse, or other place thereunto adjoining, other than for his own family, servants, labourers, or for others by way of charity, Vol. II. G

Private person suffering liquors to be brewed in his house.

hospitality,

hospitality, or free gift; or shall lend out any of his brewing vessels, other than those which are moveable and unfixed, he shall forfeit 50*l.* 22 & 23 C. 2. c. 5. *f.* 10.

Gager to enter
and take ac-
count.

The gager shall at all times as well by night as by day, (and if by night, then in the presence of a constable,) be permitted upon his request to enter the brewhouse and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gage all coppers, vats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers, or retailers. 12 C. 2. c. 24. *f.* 33.

If there be re-
fusal to permit
the gager he may
forbid sale of the
liquor.

And if any such common brewer, maker, or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers any beer, ale, or other the liquors aforesaid; and if he shall after such warning given sell, carry, or deliver out the same, or any part thereof; not having paid the duty of excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10*l.* *f.* 33.

Penalty on the
brewer for
refusal.

By the 7 & 8 W. c. 30. If any common brewer, inn-keeper, or victualler shall, on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entered, shall refuse him to stay in the brewhouse whilst his guile is brewing; and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mash-tun, or the quantity of malt from which such worts are made; he shall forfeit 20*l.*, and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. *f.* 22.

Offering or
taking bribes.

If any brewer shall bribe the gager to make a false return, or to omit the executing of his employment he shall forfeit 10*l.*; and the officer taking the bribe shall also forfeit 10*l.*, upon conviction, on the oaths of two witnesses before two justices of the peace, or the chief magistrate of the place, to be levied by distress; and for want of distress the offender to be committed to the common gaol for three months. 15 C. 2. c. 11. *f.* 16.

And by 7 & 8 W. 3. c. 30. If any maker of *cyder*, *metheglin*, or *mead*, for sale shall conceal or convey away any *cyder*, *metheglin*, or *mead*, from the view of the gager, he shall forfeit for every hogshhead of *cyder* 40s., and so in proportion for every gallon of *metheglin* or *mead* 5s. *f. 16.*

Concealing *cyder*, *metheglin*, or *mead*.

If any maker or retailer of the liquors aforesaid shall, on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors, he shall forfeit 15l. *f. 17.*

Penalty for refusing to have place searched.

By the 6 G. 3. c. 14. If any person shall obstruct the excise officer in execution of the powers of that act, in relation to the duties on *cyder* and *perry*; he shall forfeit 40l. *f. 17.*

Penalty for obstructing.

If any common brewer or maker of *cyder*, making beer, ale, or *cyder* for sale, shall deliver to any distiller or vinegar maker any wash, tilts, ale, beer, vinegar-beer, or *cyder* without first giving notice to the gager what quantity he intends to deliver, and when and to whom; he shall forfeit for every barrel 20s. 8 & 9 W. c. 19. *f. 9.*

Delivering materials to distillers.

The master of any vessel, in which shall be shipped any *cyder* or *perry* to be carried coastwise, shall within three days after his arrival at any port where any part thereof is to be delivered give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place, and the names and places of abode of the persons to whom the same was directed or consigned, and where to be delivered; which if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned, (unavoidable accidents excepted,) he shall forfeit 20l. And he shall, within 21 days after his arrival at the place of delivery, land all the *cyder* and *perry* then on board to be delivered there; on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package. 6 G. 3. c. 14. *f. 8.*

Carrying coastwise *cyder* or *perry*.

As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place who shall be sworn before a justice to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer, 15 C. 2. c. 11. *f. 7.*

Indifferent gagers may be sworn.

Brewer to declare how much he intends to make.

Every common brewer who shall make any guile of beer or ale shall declare to the gager how much strong beer or strong ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer pay the duties, and shall also forfeit for every barrel in such guile [100l. by 42 G. 3. c. 38. *f.* 16., the penalty of 20s. by 8 & 9 W. being found insufficient to prevent the fraud.] If such brewer or his servants after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found over and above such quantity 5l., and the servant assisting therein 20s. for every such barrel, and in default of payment be imprisoned three months: And if on an information against the brewer for the said penalties, it appear by his evidence that the strong beer or ale so declared was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon the oath of one witness that the strong beer or ale so added to such guile was added in the sight and view of the gager. 8 & 9 W. c. 19. *f.* 2.

Mixing drink of a former brewing.

Whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before; and the duties shall be paid accordingly. *f.* 3.

Removing drink before the whole is brewed off.

If any common brewer, innkeeper, or victualler, shall cleanse or remove out of his brewhouse any part of his guile or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without first giving notice to the supervisor or gager at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to lay or dispose of the same; he shall for every barrel forfeit 40s. 7 & 8 W. c. 30 *f.* 21.

Where

Where it shall appear to the gager that any worts are missing or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale as such worts so missing would reasonably make. *1 W. 1. c. 24. f. 6.*

Gager may charge for worts missing.

Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged when made into beer or ale. *f. 7.*

Gage may be taken in warm worts.

If any common brewer shall mix any strong beer or strong worts with any table beer or table beer worts, or with water in any guile tun, working tun, or fermenting tun, after such declaration of the quantity of the guile; or shall mix the same in any vat, cask, tub, measure, or other vessel or utensil not being an entered guile tun, working tun, or fermenting tun, he shall forfeit 200l. *42 G. 3. c. 38. f. 12.*

Mixing strong beer or worts with table beer or worts.

If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall, after an account hath been taken by the gager, convert any small beer or small worts so taken account of, into strong beer or ale, by mingling, letting down, or striking over the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager of the quantity so mingled and converted, or if any such brewer or retailer shall, after the said time, conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20s. a barrel. *15 C. 2. c. 11. f. 12. 1 W. 1. c. 24. f. 11.*

Mixing small beer with strong.

By the *2 G. 3. c. 14.* If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix or cause or suffer to be mixed in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gage shall have been taken; he shall forfeit 50l. *f. 2.*

By *42 G. 3. c. 38.* which recites, that whereas many persons, under pretence of recovering stale beer, or making or preparing beer finings, or colouring for beer, or under other pretences, have fabricated from divers ingredients, injurious to the health of his majesty's subjects, liquor to resemble beer or ale brewed entirely from malt and hops, or to be mixed with beer or ale so brewed. to the great injury of his majesty's subjects, of the fair trader, and of his majesty's revenue, it is enacted, that from the 1st of *May 1802* no person shall mix, fabricate, or prepare, or suffer to be mixed, &c. from beer grounds, stale beer, sugar water, distiller's spent wash, sugar melasses, vitriol, quassia, coculus indicæ, grains of paradise, Guinea pepper, opium, or any other material whatever (except malt and hops), any liquor to imitate,

Penalty on persons mixing liquor to imitate, to be mixed with or used as beer made from malt and hops, or selling such liquor, 200l. and forfeiture of liquor and utensils.

resemble, or to be mixed with or used as beer or ale brewed from malt and hops; nor shall sell or dispose of, or cause to be sold, &c. to any brewer of, dealer in, feller, or retailer of beer or ale, or to any other person whatever, any liquor so mixed or prepared, on pain of 200*l.* for every offence; and all liquor so mixed or prepared, and also all beer grounds, stale beer, &c. &c. other than malt and hops, in the custody or possession of such person, together with every copper, cooler, back, tun, vat, or other vessel or utensil whatsoever, in which any such liquor or material shall be contained, or which shall have been used in the mixing, preparing, or keeping any such liquor; and all such liquor and materials, together with every such copper, &c. as aforesaid, shall be forfeited, and may be seized by any officer of excise. *f.* 20.

By 51 G. 3. c. 87. reciting the 42 G. 3. c. 38. *f.* 20, 21. and that it is expedient to allow the preparation and use of liquor prepared and made from burnt sugar only, reduced to a liquid by solution in water, subject to the rules hereinafter contained, it is enacted, that for every gallon of liquor commonly called or known by the name of beer colouring, prepared or made from burnt sugar reduced to a liquid by solution in water, to be mixed with beer commonly known by the name of porter, for the purpose of colouring the same, the sum of 10*s.* per barrel, to be paid by the maker thereof.

For beer colouring a duty shall be paid.

Entry of liquor to be made weekly.

And every maker of such liquor, shall, once in every week, make a true entry in writing, at the office of excise within the limits of which he shall so make any such liquor, of all such liquor by him so made within such week, upon oath, by the maker of such liquor, or his chief workman or servant employed in making such liquor, and every such maker who shall neglect to make any such entry, shall for each such neglect forfeit 200*l.* *f.* 2.

All liquor made by a licensed colouring maker, and capable of colouring porter, to be liable to the duty.

All liquors whatsoever prepared by any person licensed by virtue of this act as a maker of liquor, commonly called by the name of colouring, prepared as aforesaid, to be mixed as aforesaid for the purpose aforesaid, and which by mixture with beer commonly known by the name of porter will darken the colour thereof, shall be liable to the said duty. *f.* 3.

Not clearing off, double duty.

Every such maker shall, from time to time, within one week after he shall make or ought to have made such entry as aforesaid, clear off all the duty for all such liquor so by him made; and every such maker who shall neglect so to clear off any such duties, shall forfeit double the amount of all such duties so neglected to be cleared off; provided that no person shall be compelled to travel for the making of the said entries or payment, further than the market town next to the place where he shall so make the said liquor. *f.* 4.

Maker not to go further than the next market town to make entry.

Every such maker, before he shall begin to make any such liquor, shall make a particular entry in writing of every house and place by him used or intended to be used, in or for the boiling, evaporating, burning, manufacturing, laying, or keeping of any sugar, or in or for the making, mixing, laying, or keeping of any such liquor, or laying or keeping of any sugar, at the office of excise, within the limits whereof such house, &c. shall be situate; and every such maker shall also make particular entry in writing of every boiler, kettle, copper, or other vessel by him kept for or used in or for the boiling, evaporating, burning, or manufacturing any such sugar, or in or for the making or mixing any such liquor at the office of excise within the limits whereof such boiler, kettle, copper, or other vessel shall be kept or used; and if any such maker shall neglect to make any such entry, he shall for every such offence forfeit 200l. together with all the sugar, and all such liquor, and all the preparatives for the making thereof, which shall at any time be found in any such house, &c. or place so used or intended to be used, and whereof no such entry shall be made; and also every such boiler, &c. whereof no such entry shall be made, and such unentered things shall be seized by any officer of excise. *f. 6.*

Makers of colouring to make entry of their workhouse, utensils, &c.

Penalties and forfeitures.

No person whatsoever residing within the limits of the chief office of excise in *London*, shall make any liquor known by the name of beer colouring, unless such person shall occupy a tenement or tenements of the yearly rent or value of 10l. or upwards, and for which he shall accordingly be assessed in his own name, and shall also pay to the parish rates; and that no person whatsoever residing in any other part of the kingdom of *Great Britain*, where there are rates to church and poor, shall make any such liquor, unless such person shall be assessed and pay to church and poor in the parish and place in which such person shall reside; and no entry of any house, &c. or place for the making of any such liquor, shall be of any avail to any person not so qualified, or for any longer time than the person so making such entry shall be qualified as aforesaid, and every person making any such liquor, and not qualified as aforesaid, shall, notwithstanding any entry by him made, be deemed to be a person making such liquor without entry within the meaning of this act. *f. 7.*

No entry of any place for making colouring within the limits of the excise office in *London* to be valid, unless made by an occupier of a tenement of 10l. yearly rent, nor in any other place, unless the manufacturer pay to the church & poor's rates where he resides.

Where any entry shall be made by any such maker of any house, &c. for the making of any such liquor, no other entry shall be made by any other maker (not being in partnership with such maker making such first entry) of the same or of any other house, &c. whatsoever for the making of any such liquor under the same roof, or within the same house or tenement in which such first entry shall then be

Where entry has been made of any house, &c. for making colouring, no other entry to be made by others of any place under the same roof, or

within the same
tenement.

existing, but every such maker making such further entry of the same house, &c. or of any other such house, &c. under the same roof, or within the same house or tenement, shall, notwithstanding such further entry by him made, be deemed to be a maker of liquor commonly known by the name of beer colouring without entry, and subject to the like penalties and forfeitures as makers thereof without entry are subject to by this act. *f. 8.*

Makers of
porter colouring
to take out
licences.

Every person who shall make any such liquor, shall, before he shall make any such liquor, take out a licence, authorizing such person to make such liquor, which licence shall be granted in manner herein-after mentioned, (that is to say), if any such licence shall be granted to authorize the person to whom the same shall be granted, to make any such liquor within the limits of the chief office of excise in *London*, the same shall be granted under the hands and seals of two or more of the commissioners of excise in *England* for the time being, or of such persons as they the said commissioners of excise or the major part of them for the time being, shall from time to time appoint for that purpose; but if any such licence shall be granted to authorize the person to whom the same shall be granted to make any such liquor in any part of the kingdom of *England* out of the limits of the said chief office, the same shall be granted under the respective hands and seals of the collectors and supervisors of excise within their respective collections and districts; the person applying for the same first paying the sum of 5*l.* for each such licence. *f. 9.*

Licenses to be
renewed yearly.

No person shall make any such liquor after the expiration of such his licence, unless such person shall take out a fresh licence for the like purpose in the manner herein-before directed, ten days at least before the expiration of such former licence, and so in like manner renew every such licence from year to year; and if any person shall make any such liquor without first taking out a licence authorizing him so to do, and renewing the same as is herein-before in that behalf directed, he shall for every such offence forfeit 20*0l.* *f. 11.*

One licence suf-
ficient for a part-
nership in one
house.

Persons trading in partnership, and in one house or shop only, shall not be obliged to take out more than one licence in any one year, for making such liquor; and that no one licence shall authorize any person to make any such liquor in any other house, &c. than such houses, &c. whereof entry shall be made at the office of excise in the name of such person for making such liquor at the time of granting such licence. *f. 12.*

Officer to enter
and survey all
places entered
by makers of
colouring.

The officers of excise may at all times enter into every the houses, &c. entered or used for the boiling, evaporating, burning, manufacturing, or keeping of any sugar, or for the making

making of any such liquor, and by weighing, gauge, or otherwise, to take account of the quantities of the sugar fit to be used in the making of such liquor, and also of the quantities of such sugar which shall be in operation of manufacture for such liquor, and also of such liquor as shall be either making or preparing, or made or prepared, in the custody or possession of such maker, and of all such liquor in respect whereof the duty by this act imposed shall be chargeable and shall not have been charged, make a report in writing to the said commissioners of excise, or to the person appointed to receive the same, and such report shall be a charge upon such maker. *f. 13.*

No such maker subject to the said duty, shall, in the preparation thereof, use any material other than brown sugar and water; and if any maker shall use any other material, he shall for each such offence forfeit 200*l.* together with all such liquor in the preparation whereof any material other than brown sugar and water shall have been used; and the same may be seized by any officer of excise. *f. 14.*

No brewer of beer, or dealer in, or retailer of beer, nor any druggist, vender of or dealer in drugs, nor any chymist or apothecary shall take out any such licence; but such licence, if taken out, shall be null to all intents; nor shall any brewer, &c. &c. make any such liquor or any other material for the purpose of darkening the colour of beer or any liquor, such as has been or shall be used for the darkening of the colour of beer, on pain of forfeiting for every such offence 200*l.* together with all such liquor and all materials whatsoever which shall be found in his custody for making the same, together with the casks and vessels containing the same, and the same may be seized by any officer of excise. *f. 15.*

No such maker nor any brewer of beer shall receive into his custody any melasses, honey, vitriol, quassia, coculus indix, grains of paradise, Guinea pepper, or opium, or any extract or preparation of quassia, coculus indix, grains of paradise, or Guinea pepper; and if any such maker or brewer shall so receive, the same shall be forfeited, and, together with the casks, &c. shall be seized by any officer of excise, and such maker or brewer shall forfeit 200*l.* *f. 16.*

No druggist or vender of or dealer in drugs, nor any chymist or apothecary, or other person whatever, shall sell, send, or deliver, or cause, procure, permit, or suffer to be sold, sent, or delivered, to any such licensed maker, knowing such maker to be or to be reputed to be a maker of such liquor, or shall sell, &c. or cause, &c. to any other person, for or on account of, or in trust for any such maker, or to any licensed brewer or dealer in or retailer of beer, knowing him to be

Makers of beer colouring to make use of no ingredients but brown sugar.

No brewer dealer in beer, druggist, &c. to be at liberty to take out a licence for making beer colouring:

Penalty on such persons for making it.

No maker of porter colouring or brewers to have in his possession melasses, vitriol, &c.

Penalty.

Penalty on druggist or chymist selling coculus indix to any maker of beer colouring.

or to be reputed to be so licensed, or shall sell, &c. or cause to be sold, &c. to any other person for, or on account of, or in trust for any such brewer, or dealer, or retailer, any melasses, &c. &c. or any extract or preparation of melasses, &c. &c.; and if any druggist, &c. or any other person whatever, shall sell, &c. or cause to be sold, &c. to any licensed maker, knowing such maker to be reputed to be such a maker, or shall sell, &c. or cause to be sold, &c. to any other person on account of any such maker, or shall sell, &c. to any licensed brewer or dealer in or retailer of beer, knowing him to be, or reputed to be so licensed, or shall sell, &c. to any other person on account of any such brewer, &c. any melasses, &c. or any extract or preparation of melasses, &c. all such melasses, &c. shall be forfeited, and the same shall be seized by any officer of excise; and the person so offending shall for each such offence forfeit 500l. *f. 17.*

Officers authorized to take samples.

Any officer of excise may take at any times samples of any sugar or liquor in the custody of any such maker, paying for the same, if demanded, the value thereof; and if any such maker shall refuse to permit any such officer to take such sample, upon his so paying for the same (if demanded), he shall for each such offence forfeit 100l. *f. 18.*

Permits to be granted for the removal of beer colouring.

Where any such maker duly licensed shall have occasion to remove any such liquor from any such his entered house, &c. the officer where such entered house, &c. shall be, shall, note being delivered according to this act by such maker, give a permit in writing, signed by the said officer, expressing the quantity of all such liquor so to be removed, and expressing the name of the person from whom the same is intended to be removed, and to whom the same is to be removed, and that the duty has been paid, and all officers giving such permit, shall limit the time within which the said liquor in such permit mentioned shall be removed, out of the stock of the maker, into the brewhouse, &c. of the person to whom the same is so permitted to be sent. *f. 19.*

No permit to be granted without a request note.

No such permit shall be granted or be valid, unless such maker shall send or deliver to the officer a request note, specifying the name of the person to whom such liquor is intended to be sent, the quantity of liquor for the removal of which such permit is required, and the number and contents of the casks or other packages containing the same, and whether to be removed by land or by water, and by what conveyance such liquor is intended to be sent. *f. 20.*

Colouring not to be removed but between six in the morning and six in the evening.

No such liquor shall be removed from one part of this kingdom to any other part, at any time than between six in the morning and six in the evening (except by a known common stage coach, waggon, or other stage carriage which usually travel out of those hours, or by water by a ship,

vessel,

vessel, or boat usually navigated in the fair course of trade out of those hours) nor shall any such liquor be sent by any such maker out of his entered house, &c. other than between six in the morning and six in the evening, on pain of forfeiting all such liquor, (whether the same be accompanied with a permit or not) and all boats, carts, carriages, horses, and cattle used in the removing the same shall be forfeited, and may be seized by any officer of customs or excise. *f. 21.*

No such liquor shall be brought into any house, &c. or other place used by any brewer of porter, without an authentic permit given according to this act, which permit shall be left with the officer under whose survey such brewer shall then be, on pain of forfeiting all such liquor, which may be seized by any officer of excise. *f. 22.*

No brewer of porter shall deposit or keep any such liquor except during the time when the same shall be brought forth for use, in any house, &c. or other place, other than one particular house, &c. whereof such brewers shall have made previous entry for that purpose at the next office of excise, on pain of one hundred pounds, and also all such liquor found in any such house, &c. of which no such entry as last aforesaid shall have been made. *f. 23.*

No brewer of porter shall use, or have in his custody any liquor, material, or preparation for colouring beer made from sugar, under this act, on pain of forfeiting all such liquor, &c. nor make use of any such liquor, &c. for the darkening of any beer other than porter; on pain for each such offence of forfeiting 200*l.* *f. 24.*

The officer of excise at all times by day and by night upon his request (but if in the night in the presence of a constable or other lawful officer of the peace) may enter into every the warehouses, &c. used by any brewer of porter, and take an account of the quantity and quality of all the beer colouring, which shall be in the custody of such brewer. *f. 25.*

In case any officer shall at any time discover that the quantity of beer colouring in the stock or possession of any brewer of porter, exceeds the quantity of such liquor left on the taking of the last account of such stock added to the quantity of such liquor since received by permit, the beer-colouring so found in excess, by whatever means the same shall have been made, and whether the same shall be mixed or unmixed; shall be deemed to be made by such liquor, for which no duty has been paid, and which had been privately brought in without permit, and a quantity equal to the excess shall be forfeited and seized by the officer who shall discover the same, out of the said stock in which such liquor shall be so found in excess; and such brewer also forfeit 50*l.* *f. 26.*

Beer colouring not to be brought into any brew-house without notice and permit.

Brewer not to keep any colouring in any place except one entered for that particular purpose.

Porter brewers only permitted to make use of colouring.

Officers authorized to enter porter brewers cellars, &c. and take an account of their beer colouring.

Increase of beer colouring in a porter brewers stock forfeited.

Forfeiture of colouring, deposited with intent to evade the duty, and the same searched for by warrant.

In case any such liquor shall be deposited or concealed in any place whatsoever, with an intent to defraud his majesty, or if any liquor called either by the name of colouring, or of beer colouring, or fit to serve as a substitute for any such liquor in respect of which such duty is imposed, or fit for the darkening of the colour of beer, shall be deposited or concealed with intent to prevent discovery by the officers, all such shall be forfeited, and shall be seized by any officer of excise, and the person in whose custody the same shall be found shall forfeit 100*l.*; and if any such officer shall have cause to suspect that any such liquor shall be so deposited or concealed in any place whatsoever, then if such place be within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners, or any two of them or before one justice of the county, city, or liberty, or if elsewhere upon oath made by such officer before one justice for the county, &c. where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, the said commissioners, or any two of them, or the justice, as the case may require, before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant under his or their respective hands and seals may authorize such officer by day or by night, but if in the night, then in the presence of a constable or other officer of the peace, to enter into every such place where he shall so suspect such liquor to be so deposited or concealed, and seize and carry away all such liquor which he shall then and there find so forfeited. *f. 27.*

On every question respecting such liquor, the proof of the kind to lie on the owner.

No beer colouring maker or person interested to act as a magistrate in the execution of this act.

Beer colouring, sugar, utensils, &c. liable to the duties and to penalties.

If any question shall arise, whether any liquor which shall be seized as and for liquor forfeited under this act, be liquor of the sort on which such forfeiture is by this act imposed, the proof shall lie upon the owner or claimer thereof. *f. 28.*

No person whatsoever being a maker of or dealer in any such liquor, or interested or concerned in the trade or business of making or dealing in such liquor, or of brewing or dealing in or retailing of beer, shall, during such time, act as a justice in any matter whatsoever, which shall in anywise concern the execution of this act. *f. 29.*

All the liquor in respect whereof any duty is by this act imposed, and all the sugar and utensils for the making thereof in the custody of any maker of such liquor, or of any person in trust for any such maker shall be chargeable with all the debts and duties for any such liquor in arrear, and owing by such maker, any such liquor so made by him or in his house, &c. and shall also be subject to satisfy all penalties and forfeitures incurred by such maker or other person using such house, &c. for any

offence against this act relating to the said duties, and it shall be lawful in all such cases to levy such debts, duties, and penalties on such liquor, sugar, utensils, or any of them, and to use such proceedings as may be lawfully done in relation to any such, in case the debtors or offenders were the true owners of the same. *f. 30.*

If any person whatsoever shall assault, molest, or hinder any officer of the customs or excise in the due execution of this act, or shall by force, after any such officer shall have seized any liquor, cask, vessel, or other package, or any boiler, kettle, copper, or other vessel aforesaid, as forfeited by this act, rescue or cause to be rescued any such liquor, cask, &c. &c., or shall attempt so to do, or shall destroy, stove, break, or damage any such cask, &c. shall for each such offence forfeit 100*l.* *f. 31.*

Obstructing officers.

If any person whatsoever shall give or offer to give any bribe or reward whatsoever to any officer of excise, in order to corrupt, persuade, or prevail upon any such officer, either to do or perform any thing whatsoever contrary to the duty of such officer in the execution of this act, or to neglect to do or perform any thing whatsoever belonging to the business of such officer in the execution of this act, or to connive at or conceal any fraud relating to any of the regulations of this act, or not to discover the same, every such person shall for each such offence, whether such offer or proposal be accepted or not, forfeit 500*l.* *f. 32.*

Bribing officers.

And that where any brewer by virtue of the 42 *G. 3. c. 38.* shall, without any intention of fraud, have incurred any penalty or forfeiture for having received into his custody and possession colouring made from sugar, all of them shall be indemnified against all penalties and forfeitures so incurred by them as aforesaid, and of and from all suits and prosecutions for or on account thereof. *f. 33.*

Relief from penalties under 42 *G. 3. c. 38.*

Excepting actions or suits which may have been commenced before the 1st day of *June 1811.* *f. 34.*

But not to stop actions begun before June 1, 1811.

All fines, &c. shall be sued for, &c. as any fine, &c. may be by any law or laws of excise, or by action of debt; one moiety to his majesty, the other moiety to him who shall inform, discover, or sue for the same. *f. 35.*

Penalties how to be recovered.

And no brewer or dealer in or seller of beer or ale, shall receive into his custody or possession any stale beer or beer grounds, or shall mix with any beer or ale any liquor compounded or prepared from beer-grounds, stale-beer, or any of the ingredients aforesaid, except malt and hops, or in the preparation whereof any of the said ingredients is or shall be mixed or made use of, nor shall receive into his custody or possession any liquor compounded or prepared as aforesaid on pain of 100*l.* *f. 21.*

Penalty on brewer receiving stale beer grounds, or mixing any liquor with beer except malt and hops, 100*l.*

Provided,

Not to extend to brewer receiving returned beer from his customers, nor to any dealer not being a brewer, if he can exculpate himself.

Provided, that no brewer or dealer in or seller of beer or ale shall be subject to the aforesaid penalty of 100*l.* for receiving into his custody or possession any stale beer returned to him for being disliked by any person to whom he had sold such beer, or of taking back any beer grounds in the bottom of any cask returned to him by any person to whom he had sent the same, filled with the beer from whence such grounds were produced; provided also, that no dealer in or seller of beer or ale, not being a brewer of beer or ale, shall be liable to the said penalty for having or taking into his custody or possession any liquor compounded or prepared from stale beer grounds, stale beer, or any of the ingredients aforesaid, or in the fabrication or preparation whereof any materials or ingredients as aforesaid, other than malt and hops have been mixed or made use of, if at the trial or hearing for recovery of the said penalty such dealer or seller shall prove to the satisfaction of the court and jury, or of the commissioners of excise, or justices before whom such hearing shall be had; that such liquor was bought and received by such dealer or seller in the fair and usual course of trade of some commonly reputed regular brewer of beer or ale, and that such dealer or seller had no knowledge of such liquor being compounded or prepared contrary to this act. *f.* 22.

Excise officers may take samples of suspected liquors; and

Every excise officer may, whenever it seems to him expedients, take samples of any liquor which he shall suspect to be liquor so mixed or prepared as aforesaid, to resemble or be mixed with or used as beer or ale brewed from malt and hops, such sample not exceeding three gallons at any one time, on paying after the rate of 1*s.* 6*d.* by the gallon.

may search suspected places; and

If any such officer shall have cause to suspect that any person does in any place mix or prepare from any such ingredients as aforesaid any liquor to resemble, be mixed with, or used as beer or ale brewed from malt and hops, or to be disposed of to any brewer or dealer in beer or ale, or to any other person, or that such liquor so mixed or prepared has been disposed of to any brewer or dealer in, seller or retailer of beer or ale, or to any other person, and that the same is deposited in any place whatsoever, then if such place be within the limits of the chief office of excise in *London*; upon oath by such officer before any two of the commissioners, &c. or if such place be in any other part of *Great Britain*, upon oath before a justice for the county, &c. or place, where such suspected place shall be situate, setting forth the ground of his suspicion, it shall be lawful for the said two commissioners, or the justice respectively, as the case may require, if they or he shall judge it reasonable, by special warrant under hand and seal, to empower such officer by day or night, but if in the night then in the presence of a constable

stable or other lawful officer of the peace, to enter into every such place where he shall so suspect any person to mix or prepare from beer grounds, stale beer, and the ingredients aforesaid any liquor to resemble or be used as beer or ale, brewed from malt and hops, or to be mixed with beer or ale or sold or disposed of to any brewer, dealer, seller, or retailer as aforesaid, or to any other person, or where such officer shall suspect any such liquor so mixed or prepared, or sold or disposed of to any brewer, &c. or any other person, is lodged or deposited, and to seize as forfeited all such liquor there found, and every other material or ingredient whatsoever as aforesaid (other than malt and hops), and every copper, cooler, back, tun, vat, and other vessel and utensil which he shall there find, in which any such liquor or ingredient shall be contained, or which shall have been made use of in the mixing, preparing, or keeping any such liquor; and the person, in whose custody or possession the same respectively shall be found, shall forfeit 100*l.* *f.* 23, 24.

may seize the liquor, ingredients, and utensils.

Penalty of 100*l.*

And if any question thereof arise, the proof of such liquor not being liquor mixed or prepared from other ingredients than malt and hops shall lie on the owner or claimer thereof. *f.* 25.

Proof to lie on the owner.

No common brewer of beer or ale shall sell, deliver, or carry out any beer or ale to any of his customers, either in the whole cask or by the gallon, in any city, town corporate, or market-town, before notice given to an officer of excise, but between three in the morning and nine in the evening from *Mar.* 25 to *Sept.* 29; and between 5 in the morning and 7 in the evening, between *Sept.* 29 and *Mar.* 25; on pain of 20*s.* a barrel. 15 *C. 2. c. 11. f. 11.*

Time of delivering out.

If any common brewer or innkeeper shall on carrying out his drink, or after it is carried out, mix any small beer or small worts with any strong beer or strong ale on his dray, or in any victualler's cellar or other place, he shall forfeit 5*l.*; and the gager may taste the drink upon the dray, and also upon request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to taste the drink in the same, he shall forfeit 5*l.* 7 & 8 *W. c. 30. f. 23.*

Mixing after delivered out.

No retailer of beer or ale shall after the receipt thereof from the common brewer mix any beer, ale, or worts of extraordinary strength with any small beer, ale, or worts, in any vessel or tub containing three gallons or more; on pain to forfeit for every barrel so mixt, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity. 22 & 23 *C. 2. c. 5. f. 11.*

Mixing by the retailer.

And

Measure of the
barrel of beer or
ale; and

allowance for
leakage, &c.

No beer or ale
to be sold at any
other rate by
the common
brewer; but not
to extend to
other brewers.

Not to be sold
in less quantities
than four and a
half gallons.

Nor at a higher
price than three
halfpence per
quart, without
license, on
penalty of 50l.

And whereas it is expedient that the quantities to be returned as and for a barrel of beer or ale brewed by the common brewer and the allowances for waste should be in all places the same, it is enacted, that after the 5th day of *July* 1803, every 36 gallons of beer or ale brewed by the common brewers in *Great Britain*, whether within the weekly bills of mortality or without the same, taken according to the standard of the ale quart, four thereof to the gallon, in the exchequer, shall be reckoned and returned by the gager or other officer of excise for a barrel of beer or ale; and the allowances to be made in *Great Britain* to the common brewer not felling beer, ale, or worts, in any less quantity than a whole cask containing $4\frac{1}{2}$ gallons, whether within or without the said limits, for waste by fillings and leakage, or otherwise, out of the returns by the gagers, or other officers, shall be 3 barrels upon every 36 barrels, both of strong beer or table beer and ale, and after that rate for any greater or less quantity.—43 G. 3. c. 69. s. 12.

The said allowance to the common brewer of 3 upon every 36 barrels of beer or ale shall be in full compensation for all waste or other losses whatsoever. s. 13.

And no beer or ale brewed by the common brewers in *Great Britain* shall be sold by them at any other rate or quantity for the barrel than as aforesaid: Provided that nothing herein shall extend to alter the quantity returned, as and for a barrel of beer or ale, brewed by any victualler or retailer, or other person than the common brewer who sells or takes out beer or ale publicly or privately. s. 14.

If any common brewer shall wittingly and willingly make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the allowance for six months then next ensuing. 12 G. 2. c. 24. s. 37.

But common brewers who shall sell beer, ale, or worts in a less quantity at one time than a whole cask containing $4\frac{1}{2}$ gallons, shall be deemed to sell by retail, and shall not be entitled to any allowance whatsoever. 25 G. 3. c. 73. s. 1.

By 32 G. 3. c. 8. s. 1. Every common brewer who shall sell beer, ale, or worts in any less quantity, at one time, than in a whole cask containing $4\frac{1}{2}$ gallons, shall forfeit 50l. for every such offence.

And if any person, not being a common brewer, shall retail beer at a higher price than after the rate of one penny halfpenny the quart, ale-house measure, without obtaining a license as a common ale-house keeper, he shall forfeit 50l. over and above any other penalty for selling beer or ale without such license. 42 G. 3. c. 38. s. 18.

Notes of every gage, signed by the gagers, containing the inches and tenths of the backs, and warts of the tuns, and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of 40s. 7 & 8 W. c. 30. f. 46.

Notes of the gage, and charges to be left.

And by the same act, the gager shall, within three days after the end of every week, deliver to or leave with the brewer or retailer or their servants a true copy under his hand of each respective charge by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing. 12 G. c. 28. f. 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10l. f. 25.

Upon complaint made before the commissioners of excise or justices of the peace on the behalf of any common brewer on account of any overcharge made on him by any officer of excise, in respect of any table beer charged and returned by such officer as strong beer, it shall not be lawful for such commissioners or justices to discharge such brewer of such charge or any part thereof, unless proof be made before them on oath by a credible witness to their satisfaction that the whole quantity of the table beer made in the guile or brewing to which such complaint refers, or at least the greater part thereof, was actually sold at a price not exceeding 16s. [but now by 43 G. 3. c. 81. f. 12. the table beer price is not exceeding 18s.] the barrel exclusive of the duty, nor unless the names and residences of the party to whom such beer or the greater part thereof was sold and delivered, and the days of delivery be given on the oath of such witness or witnesses. 42 G. 3. c. 38. f. 14.

Overcharge of excise officer, how dischargeable.

All common brewers of beer and ale shall once in every week, and all innkeepers, alehouse-keepers, victuallers, and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the same, shall once in every month make entries at the excise-office of all such liquors brewed, made, or retailed in that week and month respectively. 12 G. 2. c. 24. f. 29.

Entry and payment of duties.

All such common brewers, who do not once a week make due entries, shall forfeit 10l. And every such innkeeper, who doth not make true entries once a month shall forfeit 5l. And every alehouse-keeper, victualler, or other retailer, who does not once a month make due entries, shall forfeit 20s. *Id.* f. 30.

Every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper,

alehouse-keeper, victualler, or other retailer, who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *Id.* *f.* 31. (M.)

Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market-town, out of the said town; if he live out of a market-town, then to no other place than to the next market-town to his habitation in the same county, on the market-day. *Id.* *f.* 32.

But no common brewer shall be prosecuted for any forfeiture for any mis-entry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager rectify his entry according to the said return, or otherwise discharge himself. 15 G. 2. c. 11. *f.* 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment, if it shall appear by the evidence that he did not *bonâ fide* shew to the gager all the beer, ale, and worts of each respective guile for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 W. sess. 1. c. 24. *f.* 10.

Beer and ale,
above 18s. per
barrel, to be
deemed strong,
and at 18s. and
under, table
beer.

By 43 G. 3. c. 81. which recites, that whereas it is expedient to permit brewers of table beer to encrease the price thereof, beyond that of 16s. fixed by an act of the preceding session, (42 G. 3. c. 38. *f.* 7.) it is enacted, that during the continuance of this act, (till twelve months after the ratification of a definitive treaty of peace,) all beer and ale above the price of 18s. the barrel (exclusive of the duties) shall be denominated and deemed to be strong beer or ale and all beer of 18s. the barrel, or under (exclusive of duties) shall be denominated and taken to be table beer, within the meaning of the said act of 43 G. 3. and all other acts relating to beer or ale. *f.* 12.

The 42 G. 3. c. 38. regulates the price, &c. of table beer and it repeals the 22 G. 3. c. 68. as to table beer.

Every dealer in and seller of table beer, selling, delivering or disposing of more than one gallon at one time shall make entry at the excise of all places for storing, laying, keeping or selling such beer, and shall be subject to the laws of excise as victuallers and retailers of ale are; and if any such shall not make such entry he shall forfeit 50*l.* *f.* 17.

Penalty for selling table beer at

And if any common brewer shall sell or permit to be sold any beer made as and for table beer, and charge

with duty as such, at any higher price than 16s. [now 18s.] the barrel, (exclusive of the duties,) either as to the price of the beer, or under pretence of carriage, credit, or interest of money or other pretence, he shall for each offence forfeit 100l. *f. 13.*

more than the barrel price, exclusive of duty.

When such table beer shall be cleansed into casks, such brewer shall mark each cask on the most conspicuous part with the letter T. of the length of four inches at least, to denote that the beer therein is such table beer as aforesaid; and in case of neglect, or if any common brewer shall not continue such mark, or cause the same to remain and continue visible and distinct on every such cask, during the whole time the same shall remain in his possession, and until the same shall be delivered into the possession of the person to whom the same shall be sold or delivered for consumption, or otherwise, he shall forfeit 50l. for every such cask on which such mark shall not be put and continued. 42 G. 3. *c. 38. f. 9.*

When table beer is cleansed into casks, the same to be marked,

Every such cask shall be kept in a separate place from all other casks of beer or ale, on pain of forfeiting 50l. 42 G. 3. *c. 38. f. 10.*

and kept separate.

No table beer shall be put into or tunned, cleansed, or stored in any cask, vat, or other vessel, exceeding the content or size of a butt or pipe of three barrels, on forfeiture, for each offence, of 100l. Provided, that nothing herein shall prevent any common brewer, upon 24 hours notice thereof in writing to the proper officer of excise, from putting into any vessel of a larger size or content a sufficient quantity of table beer, not exceeding two barrels for every 100 barrels of the full content of such tun or vessel, to preserve such vessel in a proper condition for receiving or storing strong beer; and provided also that no strong beer shall be put into any such large vessel until all such table beer shall have been taken out of the same, in presence of and to the satisfaction of the proper officer of excise. *f. 11.*

No table beer to be put into a vessel of more than three barrels, on penalty of 100l. except to keep the vessel in a state to receive strong beer.

But if any person shall brew and sell by retail any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same; he shall be freed from all penalties relating to such entries and the like. 12 C. 2. *c. 24. f. 39.*

Exception of selling in fairs.

No entered dealer in beer, being an exporter of beer or ale, shall have or keep any table beer in any cellar, or other place entered for laying or keeping strong beer; and if any such dealer shall have or keep any table beer in any such cellar or other place, the person so offending shall for every offence forfeit 50l. 42 G. 3. *c. 38. f. 19.*

No exporter to keep table beer in any entered place for strong beer.

Penalty.

Compoundin^g.

The commissioners and subcommissioners may compound with innkeepers and others for the duties. *f.* 40.

But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5*l.* for every barrel. 15 *C. 2. c. 11. f.* 14.

Utensils liable to the penalties and duties.

All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do in case the debtor or offender using the said utensils had been the real owner thereof. 15 *C. 2. c. 11. f.* 13. 28 *G. 3. c. 37. f.* 21.

Power of the justices.

All fines, penalties, and forfeitures, shall be sued for, recovered, or mitigated, as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. 24 *G. 3. sess. 2. c. 41. f.* 11. 27 *G. 3. c. 13. f.* 5. 38. 42 *G. 3. c. 38. f.* 36.

No information shall be brought against any common brewer or ale-housekeeper or cyder maker for any mis-entry, or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entering the information. 1 *W. sess. 1. c. 24. f.* 16. 12 & 13 *W. c. 11. f.* 17.

Sect. V. (2.) *Things sold by auction.*

[17 *G. 3. c. 50. f.* 11—13.—19 *G. 3. c. 56. f.* 3. 4. 8. 9. 12—15. 19.—29 *G. 3. c. 63. f.* 1—3.—30 *G. 3. c. 26. —32 G. 3. c. 11. f.* 1.—*c. 41. —38 G. 3. c. 54. f.* 2. 3. 11. 16. 17. 19.—41 *G. 3. c. 91. f.* 8.—41 *G. 3. U. K. c. 42. —42 G. 3. c. 93. f.* 2. 3. 6.—8. 10. 14. 15.—43 *G. 3. c. 69. —43 G. 3. c. 130. f.* 1. 2.—51 *G. 3. c. 95. f.* 1.]

By the 17 *G. 3. c. 50.* Several duties were imposed on estates and goods sold by auction; which act is repealed by the 19 *G. 3. c. 56.* so far as it concerns the licensing of auctioneers, and collecting and managing the duties; which acts, taken together, seem to enact as followeth:

Auctioneer to be
licensed; and

No person exercising the trade or business of an auctioneer or seller by commission at any sale of any estate, goods, or effects whatsoever, by outcry, knocking down of hammer, by candle, lot, parcel, or any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser, or who shall act in such capacity, shall deal in or sell any estate, goods, or effects whatsoever, by public sale, or otherwise, by way of auction as aforesaid, without taking out a license; which, if it be within the bills of mortality, shall be granted by the commissioners of excise or such person as they shall appoint; and elsewhere, by the collectors and supervisors, within their several collections and districts, under their hands and seals. 19 G. 3. c. 56. f. 3.

In which license shall be set forth the true name and place of abode of the person taking out the same. *Id.*

For the said license shall be paid immediately on the taking out thereof the sum of 6s. over and besides any other duties or payments for trading in or vending any gold or silver plate, or otherwise. 43 G. 3. c. 69. *Schedule (A.)*

And if any person shall act without such licence, he shall forfeit 100l. if the offence be within the bills of mortality; and elsewhere, 50l. 19 G. 3. c. 56. f. 4. (N.)

The said licence shall be renewed annually, ten days at least before the expiration of the former. *Id.*

Every person, who shall exercise the trade of an auctioneer or seller by commission within the limits of the chief office in *London*, shall, when he receives his license, give bond to the king, with two sureties, himself in 1000l. and his sureties in 200l. each; (out of the bills the bond to be in 50l. penalty) that he will account for sales and pay the duty as hereinafter directed, 42 G. 3. c. 93. f. 14. 43 G. 3. c. 130. f. 1. And every person exercising the said trade in any part of *Great Britain* without the said limits shall give security by bond as aforesaid; himself in 500l. and two securities in 50l. each. 19 G. 3. c. 56. f. 8. 42 G. 3. c. 93. f. 15.

to give security
to account, &c.

By the 43 G. 3. c. 69. & 45 G. 3. c. 39. duties are imposed upon the proceeds of sales by auction.

By 29 G. 3. c. 63. no duty shall be paid for piece goods sold by auction wove or fabricated in this kingdom, which shall be sold entire in the piece or quantity as taken from the loom, and in lots of the price of 20l. or upwards; and so as the same be sold in no other than entered places, and openly shewn and exposed at such sale. f. 1, 2.

Piece goods
excepted.

And the auctioneer shall, besides the bond given on receiving his license, give a further bond in 5000l. with two sureties that he will within 14 days after every such sale deliver an account thereof at the next excise office, and will not sell by auction any goods woven out of this kingdom, or

woven in this kingdom, which shall not be sold in the entire piece, without payment of the proper duty. *Id.* f. 3.

And certain provisions excepted.

By 41 G. 3. c. 91. all corn and grain of every sort, flour, and meal, and all beef, pork, hams, bacon, cheese, and butter imported into *Great Britain*, shall be free of the duty on the first sale thereof by auction on account of the importer; so as the same be entered at some custom-house at the port of importation, and the sale thereof be within twelve months, and by a licensed auctioneer. f. 8.

And goods from Yucatan, &c.

By 30 G. 3. c. 26. all goods imported by way of merchandize from *Yucatan*, [and by 32 G. 3. c. 41. all whale oil, (and by 41 G. 3. U. K. c. 42. all elephant oil produced from sea cows or sea elephants, and commonly called "elephants' oil,") whale-bone, ambergris, and head-matter, and all skins of seals, and other animals living in the sea, and also elephants' teeth, palm-oil, dyeing-wood, drugs, and other articles for dyers' use, and all mahogany and other unmanufactured wood for the use of cabinet-makers and other manufacturers, imported in *British* ships from *Africa*, (and by 42 G. 3. c. 93. f. 3.) *America*, or any *British* settlement abroad, shall be free of the excise duty on the first sale thereof at auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the custom-house, so as such sale be made within 12 months after such goods are imported, and the same be sold by a licensed auctioneer.

Further exceptions.

Provided also that nothing herein shall extend

(1) to any sale by auction of estates or chattels made by order of the court of chancery or exchequer, or courts of great sessions in *Wales*;

nor (2) to any sale made by the *East India* or *Hudson's Bay* companies;

nor (3) by order of the commissioners of customs or excise;

nor (4) of the board of ordnance;

nor (5) commissioners of the navy or victualling offices;

nor (6) any such sales made by the sheriff, for the benefit of creditors, in execution of judgment;

nor (7) of goods distrained for rent;

nor (8) for non-payment of tithes;

nor (9) of effects of bankrupts sold by assignees;

nor (10) to goods imported by way of merchandize from any *British* colony in *America*, the same being of the growth, produce, or manufacture of such colony, on the first sale thereof, on account of the original importer to whom they were consigned, and by whom they were entered at the custom-house, so as such sale be made within twelve months after importation;

nor

nor (11) to any ships or their cargoes condemned as prize, and sold for the benefit of the captor ;

nor (12) to any ships or goods wrecked or stranded, sold for the benefit of the insurers or proprietors ;

nor (13) to the sale of any goods damaged by fire, and sold for the benefit of the insurers ;

nor (14) to any auction to be held on the account of the lord or lady of the manor for granting any copyhold or customary messuages, lands, or tenements, for the term of a life or lives, or any number of years ;

nor (15) to any auction to be held for the letting or demise any messuages, lands, or tenements for the term of a life or lives, or any number of years, to be created by the person on whose account such auction shall be held ;

nor (16) to the sale of any wood, coppice, produce of mines or quarries, or materials for working the same, or to the sale of any cattle, and live or dead stock, or unmanufactured produce of land,—so as such sale of woods, coppices, produce of mines or quarries, cattle, corn, stock, or produce of land be made whilst they continue on the lands producing the same, and by the owner of such lands, or proprietor of or adventurer in such mines or quarries, or by their steward or agent. 17 G. 3. c. 50. s. 11, 12, 13. 19 G. 3. c. 56. s. 13, 14, 15. 41 G. 3. c. 91. s. 8.

The auctioneer, if it be within the limits of the chief office of excise in *London*, shall give two days notice at the said office, elsewhere three days notice, to the collector or at the next excise office, in writing, signed by him, specifying the particular day when such sale shall begin ; and shall, at the same time, or within 24 hours after, deliver a written or printed catalogue, attested and signed by such auctioneer or his known clerk, in which catalogue shall be particularly enumerated every article, lot, parcel, and thing intended to be sold at such auction. And if he shall presume to make such sale without delivering such notice and catalogue, or sell any estate or goods not enumerated therein, he shall forfeit 20l. 19 G. 3. c. 56. s. 9.

Previous notice
to be given of
the sale.

Every auctioneer, who shall have delivered such notice or catalogue, shall within 28 days (if within the limits of the chief office of excise, elsewhere within six weeks) after the day specified in such notice for such sale, deliver at such chief office, or to the collector of excise in whose collection such sale has been or was intended to be, a declaration in writing, setting forth whether or not any such sale had been or was opened, or begun, under such notice, or any article, lot, parcel, or thing contained in such catalogue was bid for or sold at such auction ; and such auctioneer, or person acting as his clerk as aforesaid, shall make oath to the truth of such

Declaration to
be made whether
the sale took
place.

declaration before the said commissioners or collector, on pain of forfeiting 50*l*. for every neglect or refusal of delivering such declaration, verified as aforesaid. 32 G. 3. c. 11.

Buying in by
the owner, or

Provided, that if the real owner shall become the purchaser by his own bidding, or the bidding of any other on his behalf, without fraud or collusion, the commissioners, or authorised officers shall make to the owner an allowance of the said duties; provided notice [in writing, signed by the owner and intended bidder, 28 G. 3. c. 37. s. 20.] be given to the auctioneer before such bidding, both by the owner and person intended to be the bidder, of such person being appointed by the owner; and provided such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge and belief: in case of dispute, the proof of the fairness to lie upon the auctioneer. 19 G. 3. c. 56 s. 12.

his agent.

The allowance aforesaid shall be made to the owner of any estate, goods, or effects, in respect whereof the auction duties shall not have been actually paid, and which have been or shall be put up to sale by way of auction, and bought in for the owner, either by his steward or known agent, actually employed in the management of such sale, or under a notice in writing, signed as well by him as by the person intended to be the bidder being appointed by the owner, and having accordingly agreed to bid for the use of the seller: Provided, that no such allowance shall be so made unless notice in writing, signed by such steward or agent, of his being about to bid for such owner, shall have been given to the auctioneer before such bidding; such delivery to be verified by the auctioneer's oath, and also the fairness of the transaction to the best of his knowledge and belief. 42 G. 3. c. 93. s. 1.

Notices to be
produced by the
auctioneer; and
proof of fairness
to lie on him.

And no such allowance shall be made, unless at the passing of his account, such notice be produced by the auctioneer; and if any dispute shall arise concerning the fairness of the transaction, the proof thereof shall lie on the auctioneer; and on failure therein, or in case of any unfair practice, no such allowance shall be made. 19 G. 3. c. 56. s. 12. 42 G. 3. c. 93. s. 2.

Duty how to be
paid.

The aforesaid duties shall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other closing of the bidding. s. 6.

And he shall (in pursuance of his bond entered into at the time of his licensing) within 28 days, if it is within the limits of the chief office of excise in *London*, elsewhere within six weeks, deliver in an *account* in writing of the total amount of the money bid at each sale, and of the several articles, lots, or parcels there sold, and the price of each:

And shall at the same time make *payment* of the duties; which he may retain out of the produce of the sale, or depo-

fit made at such sale; or otherwise recover the same by action of debt, or on the case against the person who employed him, or on whose account the goods were sold:

Every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account.

If such auctioneer shall neglect to deliver in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same; and in case of a verdict or judgment against him, the license shall be void. *f. 7, 8.*

But if such auctioneer, not being within the limits of the chief office of excise in *London*, shall not be prepared to deliver in his account to the collector within whose collection the notice was delivered, and such sale by auction made; he may deliver in his said account within six weeks after every such sale at the chief office of excise in *London*, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector: And if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20*l.* *f. 10.*

By 38 *G. 3. c. 54.* every auctioneer, who shall neglect or refuse to make payment within the time limited by law of any duty chargeable on sales by way of auction by him held, shall forfeit double the said duty, and in case within 14 days next after such auctioneer shall have been convicted in such penalty, and execution or process shall have issued on such conviction to levy such penalty, he shall not have sufficient goods or chattels whereon to levy the whole of such penalty, and the same, or any part thereof, shall remain unpaid at the end of such 14 days; or if it shall appear that he hath acted contrary to the true intent and meaning of his bond, the said commissioners may cause such bond to be put in suit against him and his sureties, unless they shall see sufficient cause to forbear the same; and in case of a verdict against such auctioneer, his license shall be void. *f. 2.*

Whereas there is no provision at present to relieve auctioneers against any over-payment made, except in cases where sales are rendered void by reason of the person for whom sold having no title thereto, or no right to dispose thereof; for remedy thereof if any auctioneer shall make any over-payment for or on account of the duty, he may complain within 12 months after such over-payment before the said commissioners or justices respectively within whose jurisdiction such sale was made, who upon such complaint may hear and determine the same, and examine witnesses upon oath on either side, and on due proof may relieve the party so complaining

plaining of so much of such payment as shall appear to have been overpaid. *f. 3.*

Proviso with respect to fraudulent sales of goods seized by the sheriff.

Every auctioneer who shall sell any estate, goods, or chattels that have been seized by the *sheriff* for the benefit of creditors in execution of a *judgment*, shall specify and enumerate in the catalogue, as well the particular estate and effects to be sold, as the exact sum to be levied under such execution; and the sheriff or under-sheriff shall subscribe and sign such catalogue, and certify at the foot thereof, that all the said estates and effects were really and truly the property of the person against whom such judgment was had, and that the same were actually seized in execution of the same judgment: And every auctioneer, employed by the *assignees* under a commission of *bankruptcy* to sell the effects of any bankrupt, shall likewise specify and enumerate in the catalogue the particular goods and effects then to be sold; and the assignees, or assignee if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission. Which respective catalogues, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff*, *under-sheriff*, or *assignee* shall insert or suffer to be inserted in such catalogue, any estate or effects other than such as were really and truly the property of the debtor or bankrupt, or shall not certify in the catalogue the true sum to be levied, he shall forfeit 20*l.* 19 *G. 3. c. 56. f. 16.*

Goods damaged by fire.

And every auctioneer, employed to sell any goods damaged by *fire* for the benefit of the *insurers*, shall specify and enumerate in the catalogue the particular goods then to be sold; and the *insurers*, or the *insurer* if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers: Which catalogue so signed and certified shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l.* *f. 17.*

Sale void for defect of title.

If the sale shall be rendered void by reason that the person for whose benefit the estate, goods, or chattels were sold had no title or right to dispose thereof, the auctioneer who paid the duty may complain to the commissioners of excise

or justices of the peace, within whose jurisdiction respectively the sale was made, who shall hear and determine all such complaints, and relieve the party complaining of so much as shall appear to have been overpaid. *f. 11.*

By 51 G. 3. c. 95. *f. 1.* Whereas by 19 G. 3. c. 56. *f. 11.* if any sale by auction shall be rendered void by reason that the person for whose benefit, the same was sold had no title to the same, or no right to dispose thereof, the auctioneer who paid the duty, or the person for whose benefit the same was so sold, may complain before the commissioners of excise or justices of the peace, within whose jurisdiction such sale was made, and the said commissioners or justices shall hear and determine all such complaints, and upon due proof relieve the party complaining of so much as shall be made out before them to have been over paid: it is enacted, that such commissioners or justices, before whom any such complaint shall have been so laid, and by whom the same shall have been so determined, and such relief given, shall grant their warrant, directed to the proper collector of excise, authorizing and requiring him to allow and pay to the party so complaining and relieved out of the duties on sales at auction which shall next come to the hands of such collector, the full amount of such payment as shall be so made out before them, to have been over-paid.

Commissioners of excise or justices granting relief under recited act, to grant warrants to collectors of excise to pay the complainant the sums proved to have been over-paid.

But by 28 G. 3. c. 37. all such complaints shall be laid within 12 calendar months after such sale, if the same be rendered void as aforesaid within the time; but if otherwise, then within three calendar months after the discovery of such defect of title, and not otherwise. *f. 19.*

In the case of *Payne v. Cave*, E. 29. G. 3. it was determined that a bidder at an auction under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down. For the auctioneer is the agent only of the vender, and the assent of both parties is necessary to make the contract binding. Every bidding is nothing more than an offer on one side, which is not binding until assented to by the seller, which is signified on his part by knocking down the hammer. 3 T. R. 148.

A bidder may retract his bidding, before the hammer is down.

Finally, All fines, penalties, and forfeitures shall be sued for, recovered, or mitigated, as by the laws of excise, or sued for in the courts at *Westminster*; and be distributed (all necessary charges first deducted,) half to the king, and half to him that shall sue. 19 G. 3. c. 56. *f. 19.* 43 G. 3. c. 130. *f. 2.*

Levying of fines and forfeitures.

Sect. V. (3.) *Bricks and tiles.*

[24 G. 3. c. 24. *sess.* 2. f. 4.—6. 8. 10—15. 21.—25 G. 3. c. 66. f. 2—4.—27 G. 3. c. 13.—28 G. 3. c. 37. f. 16.—18. 21.—34 G. 3. c. 15. f. 2.—42 G. c. 93. f. 2.—43 G. 3. c. 69.—46 G. 3. c. 138. f. 3. 4.]

Duty.

By 43 G. 3. c. 69. *Schedule* (A.) and the 45 G. 3. c. 30. in lieu of any duties of excise then subsisting, new duties were imposed.

The said duties on bricks and tiles to be paid by the maker or makers thereof respectively.

For the duties on exportation, and importation, see the *schedules* annexed to the said act of 43 G. 3. c. 69.

Tiles for draining lands.

Provided always, that *tiles*, made for the sole purpose of draining land, 19 $\frac{3}{16}$ inches long by 13 $\frac{3}{16}$ inches broad, and bent into a semi-elliptical form, the inside of the crown of the arch thereof being not less than seven inches perpendicular, from a straight line drawn from the one to the other side thereof, after the same is so bent, and such sides not being at any part thereof, more than five inches distant from each other on the inside, and as nearly of the dimensions, and bent as nearly into the form aforesaid as may be, to be used for the purposes aforesaid, shall not be subject to any of the said duties. 34 G. 3. c. 15. f. 2.—And the exemption is extended to tiles made for such purpose not less than nine inches long; such being in every other respect of the same description and dimension as before prescribed. 42 G. 3. c. 93. f. 22.

[And by the 46 G. 3. c. 138. f. 3. It is further enacted, that semi-elliptic tiles not exceeding in inside width 6 inches, and the height of which from the outside of the crown of the arch in a perpendicular line to the extreme edge shall in all cases exceed the width, but with a foot from the bottom of the arch where necessary not exceeding 2 inches in breadth, for the purpose of keeping up the tiles in loose soils, made for draining wet or marshy lands, shall be exempted from the excise duty.

Penalty.

And by f. 4. Any person using any such tile for any other purpose than above mentioned, incurs the penalty of 6d. each tile so used.]

Notice to be given.

Every maker of bricks or tiles before he begins to make shall give or leave notice in writing at the next excise office of his name and place of abode, and of the sheds, work-houses, or other places where he intends to make such bricks or tiles; on pain of 100l. 24 G. 3. c. 24. *sess.* 2. f. 4.

When the duty shall be charged.

All bricks or tiles chargeable with the said duties shall be taken account of, and charged by the officer whilst they are

are drying, after being turned out of the moulds, and before removed to the kiln or clamp for burning; for which purpose any officer may enter into the fields, sheds, or other places where making, and take an account thereof in writing, and leave a copy (if demanded) with such maker, on pain of 40s.; and if any person shall obstruct such officer, he shall forfeit 50l. *f. 5. 11. 14.*

Obstructing the officer.

The officer in charging the duty shall allow ten for every 100 when charged in the field before burnt, in compensation for all waste, loss, or damages. *f. 6.*

Allowance for waste.

And if the maker shall remove any bricks or tiles to the kiln, clamp, or other place for burning, from or out of the field or place where they shall be put to dry, before the officer shall have taken an account thereof, he shall forfeit 50l. And all so carried away, and found in the possession of any maker, or trader therein, or person for his use, shall be forfeited, and may be seized, or the value thereof, and shall be recovered, one moiety to the king, the other to the informer. *25 G. 3. c. 66. f. 2.*

Not to be removed until surveyed.

Provided, that no such maker shall be subject to the said penalty, if the officer shall fail to take an account, on due notice given him three days before such removal. *24 G. 3. c. 24. sess. 2. f. 8.*

The maker shall keep the bricks and tiles unsurveyed separate from those that have been surveyed; on pain of forfeiting 50l. *25 G. 3. c. 66. f. 3.*

Bricks, &c. not surveyed to be kept separate.

And such maker shall, while the same are drying, place them in such manner as the officer may easily and securely take an account thereof; and if he shall place them in any irregular or unusual manner, with intent to make it difficult or unsafe for the officer to take such account, he shall forfeit 50l. *Id. f. 4.*

To be properly placed whilst drying.

If any maker shall fraudulently conceal or hide any bricks or tiles in any part of the operation of making, with intent to defraud the duties, he shall forfeit the same, and also 20l. *24 G. 3. c. 24. sess. 2. f. 10.*

Concealing to evade the duty.

Every such maker shall once in every six weeks make entry in writing upon his oath, or on the oath of his chief workman, at the next excise office, of all bricks and tiles by him made within that time, distinguishing the kinds, and specifying the names and abodes of the owner, if such maker be not the owner, on pain of 50l, and shall within six weeks after such entry, clear off all the duties then due thereon, on pain of double duty. And if any person shall carry away such bricks or tiles before the duty be cleared off, he shall forfeit double the value thereof. But such maker shall not for making such entry be obliged to go further than the next market town. *f. 12, 13.*

Makers to give an account every six weeks, and to clear off the duty.

And

Utenfils liable.

And all tools, implements, and utenfils used in making fuch bricks or tiles, in custody of fuch maker fhall be liable to be feized for any debts or penalties, (arifing or incurred under this act,) whether the debtor or offender be the lawful owner thereof or not. *f. 15. 28 G. 3. c. 37. f. 21.*

Bricks, &c. may be exported duty free.

Bricks or tiles for which the duties have been paid may be exported, and on security given before the fhipping thereof that the fame fhall not be reloaded, the perfon exporting the fame fhall be allowed a drawback of fuch duties; and in cafe fuch bricks or tiles fhall be reloaded, the fame fhall be forfeited to the ufe of his majesty, over and above the penalty of fuch bond. *f. 16, 17, 18. 27 G. 3. c. 13. Sched. (F.)*

Penalties, how to be recovered.

All penalties and forfeitures are to be fued for, levied, and mitigated as by the laws of excife (a), or in the courts at *Westminfter*, and to be diftributed half to the king, and half to him that fhall fue. *24 G. 3. c. 24. feff. 2. f. 21.*

Sect. V. (4.) Candles.

[8 An. c. 9. f. 6. 8. 10—15. 17—19. 24—26. 28. 31.—
10 An. c. 26. f. 106, 107.—11 G. c. 30. f. 23—30.—
12 G. c. 28. f. 30.—23 G. 2. c. 21. f. 27—35. 37, 38.—
23 G. 2. c. 24. f. 34.—24 G. 2. c. 40. f. 29.—26 G. 2.
c. 32. f. 8.—5 G. 3. c. 43. f. 20.—10 G. 3. c. 44. f. 15.
—24 G. 3. c. 11. feff. 2. f. 7—10. 15.—c. 30. f. 13.—
c. 36. f. 12.—c. 36. feff. 2. f. 7.—c. 41. feff. 2. f. 7.
8. 14.—25 G. 3. c. 74. f. 25. 27—30. 32, 33.—26 G. 3.
c. 77. f. 6—8. 10, 11.—27 G. 3. c. 31. f. 18. 20—22.
—28 G. 3. c. 37. f. 21.—42 G. 3. c. 93. f. 19.—43 G. 3.
c. 69.—49 G. 3. c. 98.]

Tallow chandlers to be licensed, and to be renewed annually.

Every chandler, or maker of candles for fale, other than wax candles, fhall take out a license from the officers of excife, for which he fhall pay 1l. and fhall renew the fame annually, ten days at leaft before the end of the year, on pain of forfeiting 10l. *24 G. 3. c. 41. feff. 2. f. 7. 43 G. 3. c. 69. Schedule (A.)*

Makers or fellers of wax or fpermaceti candles to be licensed.

And every perfon making wax or fpermaceti candles fhall take out a license, for which he fhall pay 6l. and for dealing in or felling fuch candles 10s. 6d. and fhall renew the fame as aforefaid, on pain of forfeiting 20l. *24 G. 3. c. 36. f. 12. 43 G. 3. c. 69. Schedule (A.)*

Persons in partnership.

But perfons in partnership need only take out one license for one houfe. *24 G. 3. c. 30. f. 13. c. 41. f. 8.*

(a) For which fee *ante*, Sect. III. and alfo 46 G. 3. c. 112.

Provided always, that no person who hath paid such license duty for *making* shall be obliged to take out a license for *selling* also during the same year. 24 G. 3. c. 41. s. 14.

Need not be
licensed as
makers and
sellers.

And by 25 G. 3. c. 74. no person residing within the limits of the head office shall be permitted to make candles, unless he occupy a tenement of 10l. a year, and for which he shall be assessed in his own name, and shall also pay to the parish rates; elsewhere, unless such person shall be assessed and pay to church and poor where he resides. And no entry made shall avail any person for any longer time than he shall be qualified as aforesaid. s. 25.

Makers of can-
dles to be rated.

By 43 G. 3. c. 69. *Schedule (A.)* in lieu of any subsisting duties of excise, other duties are imposed: [and by the 49 G. 3. c. 98. duties of customs are likewise imposed.]

Duty.

And for the duties on exportation, see the schedule annexed to the said act.

And by 24 G. 3. c. 11. *seff* 2. All powers given to the excise officers or other persons by former acts, to compound with any person for the duties on candles, shall cease. s. 10.

Compounding
abolished.

But the said duties shall not be charged on such small rush lights as shall be made by any persons to be used in their own houses only; so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in or once drawn through grease or kitchen stuff, and not at all through any tallow melted or refined. 8 An. c. 9 s. 31. 24 G. 3. c. 11. *seff* 2. s. 5.

Rush lights ex-
cepted.

During the continuance of the duties upon candles, no person shall use in the inside of his house any lamp, wherein any oil or fat (other than oil made of fish within *Great Britain*) shall be burned for giving light; on pain of 40s. 8 An. c. 9. s. 18.

Oil not to be
used instead of
candles.

No maker of candles shall erect, set up, alter, change, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise; on pain of 50. s. 6.

Places for mak-
ing candles to be
entered.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting-house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made or notice given, shall be forfeited, or the value thereof. s. 17.

By the 11 G. c. 30. If any maker of candles shall use any melting house, shop, or other place for making or keeping candles,

candles, or for melting or keeping wax, tallow, or other materials, or use any copper, furnace, or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office, he shall forfeit 100*l.* for every such melting house or other place, and for every such copper, &c. *f.* 23.

Officer to enter
and take ac-
count.

The officer shall at all times, and if in the night then in presence of a constable, be permitted on his request to enter the house, melting-house, warehouse, or other place belonging to or used by any maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report under his hand with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G. c.* 28. *f.* 30.), he shall forfeit 40*s.* 8 *An. c.* 9. *f.* 10.

The officer between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up shall on his request be opened on pain that every person obstructing or molesting him shall forfeit 100*l.* 11 *G. c.* 30. *f.* 24.

Constable need
not be present.

But the officer shall at all times, by day or by night, be permitted, upon his request, to enter into the house, warehouse, melting-house, or other place whatsoever belonging to or used by any maker of candles, in like manner as such officers might before have done in the day time. 24 *G. 3 c.* 11. *sess.* 2. *f.* 7.

Exception.

But by the 27 *G. 3. c.* 31. No officer shall enter such workhouse or place between the hours of *eleven* at night and *five* in the morning without the presence of a constable or peace officer, unless such maker shall have any course or making of candles unfinished or in operation; or shall have any legal notice depending of his intention to make between those hours; or shall have made any preparation for making any course or making of candles. *f.* 20.

No entry to be
deemed with-
drawn whilst any
duty is unpaid.

No entry shall be deemed to be withdrawn whilst any duty shall be depending and unpaid, or any copper, furnace or other utensil shall be standing in any such melting-house, workhouse, warehouse, storehouse, shop, room, or other place. *Id.* *f.* 18.

Finding candles,
&c. in unentered
places.

If the officer on searching any unentered house or place shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper mould or other utensil warm with tallow or other materials.

materials; this shall be sufficient evidence to convict the offender in the penalty of 100*l.* for having used the same not being entered. 11 *G. c. 30. f. 25.*

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *Id. f. 26.*

Summoning of offenders.

Every maker of candles for sale shall, before he begins to work upon, make, or dip any course or making of candles, not being mould candles, [but by 24 *G. 3. c. 11. sess. 2. f. 9.* the exception of *mould candles* is taken away,] or make preparation for the same, give notice in writing to the officer of such his intention, and declare the time of the day or night when he intends to begin, and the number of sticks of which such making is intended to consist, and the size and number of candles on each stick, and the number and size of the moulds he intends to fill and draw, and how often they are intended to be filled and drawn in each making; and in default thereof, or if he have at such making more sticks or more candles or of a larger size or more or larger moulds, or shall draw the said moulds a greater number of times than mentioned in such notice or declaration he shall forfeit 50*l.*, (or after the weighing by the officer increase the weight of such candles by redipping or otherwise, he shall forfeit 10*l.* And if after such notice he shall not begin at the time mentioned therein or within three hours of it, such notice shall be void. 10 *An. c. 26. f. 106, 7. 11 G. c. 30. f. 27. 24 G. 3. c. 11. sess. 2. f. 9.*

Notice to be given of the time of making.

Every such maker shall give to such officer notice in writing of the hour when he intends to begin to spread cottons, wicks, or rushes, for any course of making of candles, and the hour and time when he intends to begin to run in or dip such wicks, which notice shall be given (if within the limits of the *head office*, 6 hours; if in any *city* or market town, 12 hours; elsewhere 24 hours), before he shall begin, on pain of forfeiting 50*l.* for every time he shall so begin. 25 *G. 3. c. 74. f. 29.*

Times limited for giving such notice.

And if such maker shall not begin and proceed at the time mentioned in such notice, or within three hours next after, such notice shall be void. *Id. f. 30.*

Every maker of candles having begun to spread cottons, wicks, or rushes for any course or making of candles (other than mould candles) shall proceed and continue, without delay or interruption, until the whole intended to be used in such course or making is finished; and the time for beginning to run in or dip such cottons, wicks, or rushes respectively shall not be more than five hours after the beginning to spread the same as aforesaid; and shall continue to run in

To continue working without interruption.

or dip such cottons, &c. respectively without interruption until the whole is finished, on pain of 50l. for every such offence. 26 G. 3. c. 77. f. 6.

To begin to dip within 5 hours of spreading the cotton.

If in any such notice the hour or time specified for beginning to run in or dip such cottons, &c. shall be more than five hours after the time specified in the notice for beginning to spread such cottons, &c. such notice shall be void, and such chandler giving the same shall be liable to all such fines, penalties, and forfeitures as he would have been if no notice had been given. *Id.* f. 7.

What shall be deemed beginning to work.

And lighting a fire under a vessel, for melting the materials, or finding in such vessel, or in any mould or other utensil, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work* as shall make him liable to the said forfeiture of 50l. 11 G. c. 30. f. 28.

Furnace doors, &c. to be locked or secured.

Every candlemaker, shall, at his own expence, find and affix sufficient fastenings, to be approved of in writing by the surveyor or supervisor to every furnace, copper, pan, or other utensil used for melting materials to be made into candles; and also covers with proper fastenings to be approved as aforesaid, to every dipping mould which such maker shall have in his custody; and every such utensil shall be securely locked, fastened, or sealed by the officer as soon as any melting shall be finished; and every such dipping mould, with the cover, shall be locked, fastened, or sealed in like manner, as soon as the dipping shall be finished. And such maker shall provide a secure room, place, or chest with fastenings, to be approved as aforesaid, for locking up all moulds for making mould candles, which shall be there locked up and secured by such officer when the same shall cease to be used. And when such maker shall be desirous to light a fire, and to have the furnace door, copper, pan, or utensil or dipping mould opened, or to use such moulds, he shall give to such officer 6 hours notice in writing if within the limits of the *chief office*; 12 hours if he shall reside in *any market town*; and 24 hours if he reside *out of a market town*; and such officer shall attend at the time mentioned in such notice, and open such doors and places as the case may require; and if such maker shall not light a fire, or shall not proceed to use such utensils, within one hour after the doors are opened, such notice shall be void, and such officer shall proceed to lock up and secure the same again in manner as aforesaid, and such maker shall be obliged to give a fresh notice. And if such maker shall neglect or refuse to do and perform any of the matters aforesaid, or to pay for any locks, keys, or other necessary fastenings which shall have been provided by such officer, or if any person shall hinder

any officer in fixing such locks or fastenings, or in locking, sealing, or securing the same in such manner as he shall think most effectual to answer the purposes of this act, or shall open any such furnace, copper, pan, utensil, dipping mould, or door before the same shall have been opened by the officer, or shall wilfully break or damage any lock, seal, or fastening; he shall for every such offence forfeit 100l. 27 G. 3. c. 31. s. 21.

If there shall be on the premises in the custody of any candlemaker any mould proper to be made use of for making mould candles, not locked up and secured as aforesaid, unless after notice given as aforesaid; every such maker shall forfeit 100l. *Id.* s. 22.

Having moulds not locked up.

The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108lb. of candles for every 112lb. of materials missing, and so proportionably. And if any such maker shall obstruct the officer, he shall forfeit 20l. 8 An. c. 9. s. 12, 13.

The officer shall charge for materials missing.

Candles cracked or spoiled in making may be defaced by the officer, who shall make allowance for the duty. s. 29.

Candles spoiled in making.

No maker of candles (on pain of 20l.) shall remove any candles before the officer hath taken account of the same, without giving to the officer, within the bills, 24 hours notice, and elsewhere, two days notice, of his intention to remove the same. s. 14.

Removing candles before surveyed.

The maker shall keep his candles which have not been surveyed separate from all other candles which have been surveyed, for 24 hours after making, within the bills, and for two days elsewhere; unless they shall have been sooner surveyed by the officer; on pain of 5l. s. 15.

Candles unsurveyed to be kept separate.

If the officer shall have cause to suspect that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner [two commissioners, 24 G. 2. c. 21. s. 34.] or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable,) to enter into every such place so suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or

Search for candles concealed.

preparing for making the same, and also all such candles as he shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100*l.* unless he shall prove payment of the duty. 5 *G. 3. c. 43. s. 20.*

If any person shall obstruct any such officer in searching any such suspected places, or in seizing such candles, he shall forfeit 100*l.* 23 *G. 2. c. 24. s. 34.*

Further penalty
of removing,
mingling, or
concealing.

If any maker of candles for sale shall mingle candles which have not been weighed by the officer with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials; he shall forfeit 100*l.* 11 *G. c. 30. s. 30.*

Persons assisting
in privately
making candles.

If any officer shall discover that any making of candles is carried on in any private workhouse, room, or place whereof no notice has been given as aforesaid; and shall at the same time discover therein any person knowingly assisting or any ways concerned in carrying on the same, he shall forfeit 20*l.* over and above all penalties which such maker shall be liable to: And such officer may detain such person, and carry him before a justice, who on confession or oath of one witness may convict such offender, who immediately on conviction shall pay 20*l.* into the hands of such officer, and on his refusing or neglecting such justice shall by warrant under hand and seal commit him to the house of correction to hard labour for *two* months, unless the penalty be sooner paid: And if such person shall be convicted of a second offence, he shall in like manner pay 40*l.* or be committed for *four* months. 25 *G. 3. c. 74. s. 31.*

Entry of candles
made.

Every person who shall make any candles shall once in every week make a true entry in writing, at the next excise office, of all candles by him made within such week; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the said week; on pain for every neglect of entry to forfeit 20*l.* Which entry shall be upon the oath of the maker or his chief workman, or servant employed in the making, according to the best of their knowledge and belief; and said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. *s. 27.*

But he shall not be obliged to go further than the next market town for making such entry. 8 *An. c. 9. s. 8.*

The maker shall in one week, after such entry, clear off the duties on pain of double duty; and no maker after such default

Duty to be
cleared off.

default in payment shall sell, deliver, or carry out any candles till he hath cleared off the duty, on pain of double value. 25 G. 3. c. 74. s. 28.

And if there shall be found in the possession of any maker of candles for sale any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been charged and paid, he shall be chargeable with the duties; and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the surveying officer, or at the next excise office of his intention to buy the same, and of whom. 11 G. c. 30. s. 29.

Candles not entered, nor duty paid.

And if any person shall knowingly receive, buy, or have in his possession any candles after the same shall be removed from the place where they were made and ought to have been charged with the duty, before the said duty hath been charged (except such as have been condemned as forfeited), whether he claim any property or interest therein or not, he shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sorts shall then bear in London. 26 G. 3. c. 77. s. 10, 11.

Persons having candles in their possession not charged with the duty.

No person shall expose to sale any candles, unless in his public shop or warehouse, public fair or market, on pain of 5l. 8 An. c. 9. s. 18.

Candles, where to be sold.

Cocquets granted for shipping candles to be landed in any other part of the kingdom shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited and seized, together with the package. 23 G. 2. c. 21. s. 29. (a)

Candles carried coastwise.

No candles shall be imported, otherwise than in some package containing at least 224lb. neat, of candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50l. s. 27. 42 G. 3. c. 93. s. 19.

Exportation and importation.

But on information brought against such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages in payment of the forfeiture. 26 G. 2. c. 32. s. 8.

The officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and

(a) The provisions of 23 G. 2. c. 21. respecting *candles*, are the same respecting *soap* and *starch*.

seize all candles forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. *f.* 28.

And no candles imported otherwise than according to 23 G. 2. c. 21. *f.* 27. shall be entered for exportation, on pain of forfeiture of the same. 42 G. 3. c. 9. *f.* 19.

And all wax candles seized on importation or otherwise, and condemned for non-payment of the duties shall be broken or otherwise rendered unfit for use. 24 G. 3. c. 36. *sess.* 2. *f.* 7.

Candles for which the duty hath been paid may be exported and the duty drawn back. 8 An. c. 9. *f.* 24, 25, 26. 43 G. 3. c. 69. *Schedule (C.)*

The officers of customs or excise may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100*lb.* weight, and also the candles and package shall be forfeited. 23 G. 2. c. 21. *f.* 30.

If any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package vessels, boats, horses, and other carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officer of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred weight. *f.* 31.

If any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture, or suffer the same, he shall, whether he claim any property therein or not, forfeit 50*l.* for every 100*lbs.* weight, together with the candles and package. *f.* 32.

And where any such candles shall be seized as forfeited, and *no person shall claim the same* in 20 days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the day and time of day, for proceeding to trial and condemnation of the same, by the commissioners of excise; and if it be *out of the said limits*, then public notice shall be given by proclama-

proclamation at the next market town on the market day next after the said 20 days, of the day and place, when and where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or to be removed by *certiorari*. *f.* 33.

But where *any person shall claim the same*, then all informations for the condemnation of such seizures, or recovering such penalties, (if within the limits of the chief office in London,) shall be heard by the commissioners of excise or appeals, elsewhere by two neighbouring justices where the seizure was made or penalty incurred; who on complaint within three months may summon the party accused, and the witnesses on either side, and on appearance of the offender, (or on proof of notice given to him,) may proceed to examine the facts and witnesses upon oath, and to give judgment as well for the penalty as for the condemnation of such candles, and the packages, boats, cattle, and carriages so seized, and to issue their warrant for the sale thereof, and for levying any pecuniary penalty upon the goods of such offender, which may be sold if not redeemed within 14 days; and for want of sufficient distress, such offender may be imprisoned till satisfaction be made. *f.* 37.

Penalties by
23 G. 2. c. 21.
how to be reco-
vered.

If either party be not satisfied with the judgment of such justices, he may appeal to the next sessions, whose judgment therein shall be final; and shall not be removeable by *certiorari*. *Id.* and *f.* 40.

Appeal.

And all such penalties and forfeitures shall be applied, half to the king, and half to the seizer or prosecutor. *f.* 34.

Distribution of
penalties.

Provided, that any such penalties and forfeitures may be mitigated, so as not to reduce the same to less than one-fourth over and above the costs. *f.* 38.

Mitigation.

Where candles shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. *f.* 35.

Proof to lie on
the owner.

If any maker of candles shall obstruct any officer in the execution of the powers given to him by this or any other act, for securing the duties on candles, he shall for every such offence forfeit 100l. 24 G. 3. c. 11. *seff.* 2. *f.* 8.

Obstructing of-
ficers.

And every maker shall keep just scales and weights where he makes his candles, and shall permit and assist the officer to make use thereof, on pain of 10l. 8 Ann. c. 9. *f.* 11.

Scales and
weights.

By 10 G. 3. c. 44. If he shall make use of insufficient scales or weights, he shall forfeit 100l. But not to be prosecuted both on this and the former act. [And by 28 G. 3. c. 37. the same shall be forfeited, and may be seized by any officer of excise. *f.* 15.]

Cheating or obstructing the officer in weighing.

If he shall in weighing his stock, put any other substance therein, whereby such officer may be hindered from taking a just account of such stock, or shall forcibly obstruct or by any contrivance prevent or impede such officer, he shall forfeit 100*l.* 26 G. 3. c. 77. f. 8.

Power of the justices.

All the fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise (a), or in the courts at *Westminster*; and distributed, half to the king and half to him that shall inform or sue. 8. An. c. 9. f. 28. 11 G. c. 30. f. 29. 24 G. 2. c. 40. f. 39. 25 G. 3. c. 74. f. 32, 33.

Utenils liable to the duties and penalties.

All candles, materials, and utensils for making candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 An. c. 9. f. 19. 28 G. 3. c. 37. f. 21.

Sect. V. (5.) *Coffee, tea, chocolate, and cocoa-nuts.*

[10 G. c. 10. f. 2. 10—18. 22—26. 28—35. 39—41.—11 G. c. 30. f. 1. 4. 5. 9. 10. 13—15. 39.—12 G. c. 28. f. 1. 6. 29. 33.—4 G. 2. c. 14. f. 10—12.—9 G. 2. c. 35. f. 20. 22.—18 G. 2. c. 26. f. 5, 6—8. 14.—24 G. 2. c. 40. f. 33.—32 G. 2. c. 10. f. 16, 17.—5 G. 3. c. 43. f. 34—36. 38.—10 G. 3. c. 44. f. 1.—12 G. 3. c. 46. f. 1—6.—13 G. 3. c. 44. f. 2—6.—17 G. 3. c. 29. f. 1—9.—19 G. 3. c. 69. f. 18—22.—20 G. 3. c. 35. f. 13—16.—21 G. 3. c. 55. f. 10—15. 17—20. 22. 24—26.—22 G. 3. c. 68. f. 21—23.—23 G. 3. c. 79. f. 4.—24 G. 3. c. 70. f. 28.—25 G. 3. sess. 2. c. 47. f. 31.—26 G. 3. c. 77. f. 8.—27 G. 3. c. 13. f. 12, 13. 15.—28 G. 3. c. 37. f. 15.—35 G. 3. c. 118. f. 8—12. 14—16. 22—24.—42 G. 3. c. 93. f. 19.—43 G. 3. c. 68. f. 45.—c. 69. f. 4.—c. 129. f. 3—5.—48 G. 3. c. 120. f. 1, 2. 5. 8.—49 G. 3. c. 80.—52 G. 3. c. 53.]

Customs.

By 49 G. 3. c. 98. All former duties of customs are repealed and new duties imposed; see *Schedule (A)*.

[As to securing coffee in warehouses, and exporting cocoa nut; see 43 G. 3. c. 132. f. 14. 20. 45 G. 3. c. 87. 46 G. 3. c. 137. 48 G. 3. c. 120. f. 9. 10. & c. 126 (*ante*).]

Excise duty.

[And by 43 G. 3. c. 69. all former duties of excise are in like manner repealed, and in lieu thereof others are imposed; see *Schedule (A)*.

And by the 48 G. 3. c. 120. f. 1. Those duties of excise are also repealed, and by f. 2. others are imposed; and by the 49 G. 3. c. 117. a further alteration was made.]

(a) For which see *ante*, 46 G. 3. c. 112.

The duties upon tea to be paid by the purchaser to the company, and by the company to the commissioners of excise.

And certain drawbacks are allowed on exportation thereof.

By 52G.3. c.53. reciting that by 42G.3. c.93. all goods, wares, merchandize, and effects imported in any *British* ship or vessel from any *British* colony or settlement in *America*, might be sold by auction free of the duty on goods and effects sold by auction, subject to a proviso, that nothing in the said act should be deemed to extend to authorize the sale of any such, free of the said duty, unless such sale should be made within 12 months next after the time when such goods or effects should have been so imported: it is enacted, that all coffee so imported be sold by auction, free of the duty on goods and effects sold by auction at any time whilst the same shall remain lodged in any warehouse under the 43G.3. c. 132. relating to the warehousing of goods without payment of the duties.

Coffee imported from the British colonies may be sold by auction free from duty while remaining in warehouse under 43 G. 3. c. 132, &c.

No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10G. c.10. f.2.

Chocolate or cocoa paste, not to be imported

And if any person shall import any cocoa nut shells, or husks without the nuts, the officers of the customs, excise, or inland duties may seize them with the bags, boxes, and other package; and after condemnation they shall be destroyed, or otherwise disposed of, as any three respective commissioners shall appoint; and they may reward such officer in any sum not exceeding 20s. per cwt. 4G.2. c.14. f.12.

Cocoa nut shells, without the nuts.

Coffee may be imported in packages, each containing 100lbs. at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be seized by any officer of the customs or excise. And none other shall be entered for exportation. 5G.3. c.43. f.34. 23G.3. c.79. f.4. 42G.3. c.93 f.19. 48G.3. c.120. f.5.

In what quantities coffee may be imported.

The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa-paste, and seize all such as shall be forfeited, or shall be unshipping, or unshipped, to be laid on land, without entry and payment of duties, with the boxes, bags, or other package. 11G. c.30. f.1.

Officers may go on board and search.

By the 9G.2. c.35. Where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the person in charge of such vessel shall give notice, and make proof before the chief officer of customs, immediately

Ships hovering near the coast, with tea on board.

ately after arrival in the said port, with coffee on board; all such tea, with the chests and other packages, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. *f.22.*

And by the 5 G.3. c.43. Where any vessel coming from foreign parts, and having on board 20lbs. of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (notice, as in the 9 G.2. c.35. *f.22.*, supra); all such coffee, together with the package or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burden of 50 tons: to be disposed of according to the 5 G.3. c.43. *f.38.*

Warehouses to be provided, and officers to attend, for coffee and cocoa nuts.

By 35 G.3. c.118. The commissioners of excise shall provide, near to the respective ports, warehouses for lodging coffee and cocoa nuts. And the commissioners of customs and excise shall appoint officers to attend such warehouses *f.8,9.*

[But by 48 G.3. c.120. *f.8.* Coffee and cocoa nuts shall be warehoused under the regulations of the 43 G.3. c.132 which see *ante.*]

Casks, &c. of coffee and cocoa nuts to be marked and warehoused.

The officers of excise shall mark every cask, bag, or other package of coffee or cocoa nuts, on board ships importing them; with a progressive number, and a distinguishing landing mark, and if unshipped before so marked, they shall be forfeited, and seized. And when so marked, the importers proprietors, or consignees shall in the presence of the officer unship and convey the same to some warehouse so provided and such officer shall attend. *f.10.*

Within 14 days of being warehoused, the damaged parts to be separated, and an account to be taken.

And within 14 days of being so warehoused, the importer &c. shall take the same out of the cask (*a*.) and shall bring the same and also the casks, &c. to be weighed, and may then separate the damaged parts from the merchantable parts, and repack the same into casks, &c. containing not less than 112lb each; and the officers shall take an account of the tare of each cask, &c. and weight of the coffee and cocoa nuts contained therein, and such importer, &c. shall take the same from the scales, and the officer of the customs and excise shall jointly mark every such cask, &c. with the tare, net weight, place of

(a) Under the words *casks, &c.* is to be understood also *bags, &c.* other *package*, without repeating those words; except otherwise expressed.

growth, and proper landing marks and numbers, and such importer, &c. shall remove and stow the same as such officer shall direct; on pain of forfeiting 50l. *f. 11.*

Provided, that no such person shall be so liable unless he neglect to take such coffee or cocoa nuts out of such casks, &c. or to bring the same to be weighed, or to remove and stow the same as aforesaid, for three days after notice from the officer. *Id.*

Three days
allowed after
notice.

And after such weighing and account taken, the importer, &c. in the presence of the officer, may take samples not exceeding four ounces and not more than three samples, out of each cask, &c., and if he shall take a second or third sample, he shall return those previously taken, or a quantity equal in weight. *f. 12.*

Samples may be
taken.

When any importer, &c. intends to take out of such warehouse any coffee or cocoa nuts, he shall give previous notice in writing to the officer, if for home consumption one hour, if for exportation 12 hours before it shall be taken out, specifying the casks, &c., and their landing, numbers, and marks; and shall, within one hour afterwards bring the same to be weighed, and forthwith pay down the duty for that taken out for home consumption, according to such weight. And the turn of the scale shall be in favour of the crown, and in lieu thereof, and of all loss or damage whatsoever, shall be allowed 1lb. upon every 100lb. of coffee, and 2lb. upon every 100lb. of cocoa nuts. *f. 14, 15.*

Regulations for
taking coffee and
cocoa nuts, &c.
out of ware-
houses.

Coffee or cocoa nuts may be delivered from any such warehouse for home consumption, on producing certificates of the payment of the duties of customs and excise, and a permit for the removal thereof shall be granted. But the same shall not be delivered out either for home consumption or exportation, in less than the entire cask, &c., in which it was imported or repacked, and not less than 112lb. weight. *f. 16.*

Allowance for
turn of the scale.

When delivered
for home con-
sumption, and a
permit granted.

The importer of any coffee, tea, or cocoa nuts, within 30 days after the master or purser shall, or ought to have made entry, (in pursuance of 13 and 14 G. 2. c. 11.) at the custom house of the burden, contents, and lading of the vessel, shall make due entry of the same with an officer of excise, to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties, shall be landed and put into warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10. G. c. 10. *f. 26.* 5 G. 3. c. 43. *f. 35.*

Tea, coffee, and
cocoa nuts to be
entered and
warehoused.

If any person shall import any coffee, tea, or cocoa nuts, without entry at the custom house, and bringing the same into the warehouse, the same shall be adjudged clandestinely run,

run, and be seized by any officer of the customs or inland duties; and the same shall be forfeited with the bags or other package, together with the horses, carts, and carriages. 10 G. c. 10. f. 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the same as is above directed, all such coffee, tea, and cocoa nuts shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to such importer so neglecting or refusing; which may be seized by any officer of excise. 5 G. 3. c. 43. f. 35.

Provided, that this shall not extend to any coffee or tea imported by the *East India* company. f. 36.

Owner and officer to have each a lock and key.

And the proprietor of the said coffee, tea, and cocoa nuts, and the officer for the inland duties, (who shall be appointed by the commissioners of the said duties,) shall have each a lock and key; and the importer and owner may, in presence of the said officer, and of the warehouse keeper, (to be appointed by the commissioners of the customs,) view, garble, and sort the said goods to make them merchantable, and receive them out in the manner hereinafter mentioned. 10 G. c. 10. f. 26. 29, 30. 21 G. 3. c. 10. f. 10.

Taking out of the warehouse coffee and tea for home consumption.

That is to say, if the coffee or tea are intended to be taken out for home consumption, the proprietor or importer within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere, shall make entry at the next office, and pay the duties to the collector; and on producing a warrant or certificate signed by such collector or receiver, (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate. 10 G. c. 10. f. 26.

A permit to be given as herein directed, as to coffee, tea, and cocoa nuts.

And upon the delivery out of any such warehouse, of any coffee, tea, or cocoa nuts expressed in such warrant or certificate, the proper officer of excise shall grant a permit in writing and signed by him, specifying the weight thereof respectively, and the name of the person to whom, and the place to which the same is intended to be removed, and whether by land or by water, and the intended mode of conveyance; and such officer shall limit and express in such permit, the time in which such coffee, &c. shall be removed from such warehouse, and shall be received into the house, warehouse, shop, room, or other place of the person to whom the same is so permitted to be sent; and if such permit be for the removal of tea, and the tea so to be removed be bohea, congou, fouchong, or pekoe tea; then any such tea shall in the said permit be specified under the denomination

f BLACK TEA; and if the tea be neither bohea, congou, puchong, or pekoe tea, then such tea shall be specified under the denomination of GREEN TEA. 43 G. 3. c. 129. s. 3.

And if any coffee, tea, or cocoa nuts specified in such permit shall be removed from any such warehouse, within the time limited in such permit, and shall not within the time limited in such permit be actually delivered, and received into the house, &c., of the person to whom the same is by such permit authorized to be sent; then all such coffee, &c. so removed as aforesaid, shall be deemed and taken to be coffee, &c. removed without permit. s. 4.

If the coffee or tea are intended to be taken out for exportation, they shall be delivered out on security given that they shall be exported, and not relanded; which security shall be discharged on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants then here, that the same were there landed; or on proof by credible persons that they were taken by enemies, or perished in the seas. 10 G. c. 10. s. 26.

By the 18 G. 2. c. 26. no drawback shall be allowed on tea exported. s. 5. But for all teas for which the duties imposed in respect thereof shall have been paid, and which shall be duly exported as merchandize directly from the warehouses, in which the same shall have been lodged according to law upon the importation thereof to *Ireland*, or the plantations in *America*, or the United States of *America*, or to the islands of *Jersey* or *Guernsey*, or to *Gibraltar*, or to any place on the Continent of *Europe*, where there shall be a *British* Consul, resident for the protection of trade, or to *Africa*, a drawback of all the duties is allowed. 43 G. 3. c. 69. Schedule (C.)

The cocoa nuts shall not be taken out of the warehouse, but upon payment of the inland duties aforesaid; that is to say, the importer or proprietor (within the bills,) shall make entry with the receiver or collector there of the quantity he intends to take out, and pay down the duty; (and elsewhere, shall make entry at the next excise office, and pay the duty.) And on producing a certificate signed by such receiver or collector, (certifying that he has received the said inland duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall give a permit to accompany the cocoa nuts so delivered out, which shall also be signed by the officer attending the warehouse, to prevent the seizing thereof. And the garble of all such cocoa nuts, when garbled and secured in the warehouse, shall by order of the commissioners of excise be removed out of the warehouse.

Coffee, &c. not removed and delivered within the time, shall be taken to be removed without permit.

Taking out of the warehouse coffee and tea for exportation.

Drawback for tea.

Taking out of the warehouse cocoa nuts either for home consumption or exportation.

house by the officers attending the same, and forthwith burnt or otherwise destroyed. 21 G. 3. c. 55. s. 10, 11.

Cocoa nuts and chocolate may be exported.

And the cocoa nuts for which the duty has been paid, or the chocolate made of such cocoa nuts, may be exported, on security given that they shall not be reloaded. And on oath made by the exporter that the said duties have been paid, the excise officer at the port of exportation shall give a certificate of the quantity and kind, and that the same was shipped in his presence, and that sufficient security has been given; whereupon the collector of excise of that district shall pay back four-fifths of the said inland duty. s. 12—15.

Regulations to be observed on exportation.

Every person who hath paid all the duties for any of the said commodities, or who shall be the owner thereof, may export the same on the terms following, (viz.) giving 12 hours notice within the limits of the chief office, elsewhere 24 hours, of his intention to pack up the same and of the time and place to the officer of excise, who shall attend to see the same packed up; and such officer shall secure the same with such seal or mark, and in such manner as the commissioner shall direct. And if any person shall open such package, or wilfully destroy or deface such seal or mark, he shall forfeit 20l. 27 G. 3. c. 13. s. 12.

And if such person shall not begin to pack up such goods at the time mentioned in such notice, or within one hour such notice shall be void, and such person shall be obliged to give a fresh notice. *Id.* s. 13.

Relanding.

Provided, that if, after the shipping any such goods, a bond given in order to obtain a drawback of the duties, the said goods or any part thereof shall be reloaded, or put into any other vessel, (shipwreck, or other unavoidable accident excepted,) that then, over and above the penalty of such bond, the said goods or the value thereof shall be forfeited and may be seized by any officer of excise or customs. *Id.* s. 15.

What quantity shall be taken out at a time.

No seller or dealer in coffee, tea, or cocoa nuts shall receive out of the warehouse less than 10wt. of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than 10wt. of each sort. 10 G. c. 10. s. 34.

Warehouse-keeper and officer to keep an account.

And the warehousekeeper and officer appointed by the commissioners of the inland duties, and of customs, shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six months, or oftener

required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: which said commissioners shall within one month appoint a person to inspect the books and warehouses, and examine the accounts: and if it shall appear that any coffee, tea, or cocoa nuts was otherwise delivered out, or before payment of the inland duties on the coffee and tea sold for home consumption, or giving security for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit his office and also be disabled to hold any public office. 10 G. 3. c. 55. f. 29.

No damaged coffee, which cannot be sold at a public sale, for 1s. 6d. a pound, nor cocoa nuts for 1s. a pound, shall on any account be sold to be consumed in this kingdom, but shall be secured in warehouses, and not taken out till security be given for the exportation thereof. 21 G. 3. c. 55. f. 17. (as to the security, see ante.)

Damaged coffee or cocoa nuts.

Where any officer of excise shall have seized as forfeited any coffee, chocolate, cocoa nuts, or cocoa paste, the commissioners shall allow him one-third of the full sum that shall arise from the sale thereof after condemnation: Provided, that if at public sale the same be sold [*Note, the sense seems to require that the word "not" ought to have been inserted, so as that the sentence should have run, "if at public sale the same be not sold"*] for 1s. a pound, the same shall not in any wise be sold, but shall be burned or otherwise destroyed; and the officer shall be rewarded as the commissioners shall think fit, not exceeding 6d. for each pound respectively so burned, or destroyed. 21 G. 3. c. 55. f. 18, 19.

Allowance to the officer for seizing coffee, chocolate, cocoa nuts, or cocoa paste.

But no officer of the customs or other person shall be entitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, or supervisor, on pain of re-seizure. 12 G. c. 28. f. 6.

Every person who shall keep a public-house, shop, cellar, or other warehouse for selling brandy or other spirituous liquors, and shall have in his custody for his use any coffee, tea, chocolate, or cocoa nuts above six pounds weight of any kind shall be deemed a dealer in the said commodities. 11 G. 3. c. 30. f. 4.

Who shall be a dealer in coffee, tea, and chocolate.

If the officer of excise shall find any increase of the stock of any dealer over and above what the officer found in his last survey; such increase shall be deemed to be made by a commodity for which no duty has been paid; and so much

Dealer fraudulently increasing his stock.

of the said stock as shall be found increased shall be forfeited, and taken by the officer of excise discovering the same, and the person in whose stock the increase shall be found shall also forfeit 20l. 21 G. 3. c. 55. f. 29.

Sales of tea.

The commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the duty shall be ascertained and to prevent mistakes the said officers may inspect the company's books. 18 G. 2. c. 26. f. 6.

Every person declared the best bidder at such sale shall within three days after deposit with the company or their clerk 40s. for every tub and chest of tea, on pain of six times the value of such deposit, and such sale shall be void, and the same shall in 14 days after be put up again: and such buyer shall be incapable of bidding for, or buying any teas at any future public sale. 18 G. 2. c. 26. f. 7. And by the 13 G. 3. c. 44. the deposit for every tub and chest of bohea tea shall be 4l. f. 2.

Tea may be exported.

And by the said act of 13 G. 3. c. 44. The commissioner of the treasury may grant license to the *East India* company to take out of the warehouse (without the same having been put up to sale), and to export to any of the *British* plantation in *America*, or to foreign parts, such quantities of tea as they shall think proper, discharged from the payment of any duties or customs whatsoever. Provided, that no such license shall be granted, unless it be made appear to the said commissioner that there will be left remaining in the warehouses a quantity of tea not less than ten millions of pounds weight. f. 3, 4, 5, 6.

Limitation of quantities of tea to be removed at one time.

No tea shall at any time be removed, with or without permit, from any place not being within the limits of the bill of mortality to any place within the said limits; and no tea exceeding 20lbs. weight, (not being in the original chest in which it was imported) shall at one time be removed, directed to one and the same person, whether with or without a permit, from any place not within the said limits to any other place out of the said limits, not within the town, parish, or place from whence removed; on pain that the same, together with the canisters, bags, and other package, vessels, and boats, horses, and other cattle and carriages shall be forfeited, and may be seized by any officer of excise: Provided, that this shall not extend to prevent any dealer from taking out two or more permits, and by virtue thereof sending two or more packages of 20lbs. each to the same person in the same day by different conveyances. 21 G. 3. c. 55. f. 20, 21, 22 G. 3. c. 68. f. 21, 2, 3. 23 G. 3. c. 70. f. 28.

All tea seized any where in *England*, and condemned according to law shall be sold publicly to the best bidder at such places as the commissioners shall think proper, without requiring such tea to be sent to *London*. 24 G. 3. *sess.* 2. c. 47. §. 31.

Tea seized need not be sent to *London*.

If any dealer, having received any tea into his stock, shall within 24 hours after such receipt, see cause to return the same, he shall give 12 hours notice to the officer of excise, expressing the cause of return; and he shall attend, and having examined the tea, and taken an account thereof, the dealer shall immediately, in his presence, repack it, and in half an hour after his arrival, who shall grant a permit for returning the same; and if he shall return the same without a permit, or be guilty of any fraud relating thereto, he shall forfeit 100*l.* 21 G. 3. c. 55. §. 24.

Dealer returning tea.

When any dealer in tea shall have taken out a permit for removing tea from his own stock to the stock of any other like dealer, the officer may take a sample (not exceeding two ounces nor less than one, to be sealed by the trader in the presence of the officer,) out of each parcel so intended to be removed, paying for the same according to the price that such tea is then commonly sold for: And if such dealer shall refuse to permit the officer to take such sample, or shall deliver a sample not being the very tea so to be sent away, he shall forfeit 20*l.* §. 25.

Officers may take samples.

If any tea, exceeding 6*lbs.* shall be found carrying in any part of the kingdom, unless from *Sept.* 29 to *March* 25, between seven in the morning and five in the evening, and from *March* 25 to *Sept.* 29, between five in the morning and seven in the evening, (except the same be carrying by a known common stage-coach, or other stage-carriage, which usually travel out of those hours,) the said tea, together with the package, whether with or without a permit, and all cattle and carriages made use of in carrying the same, shall be forfeited, and may be seized by any officer for the inland duties on tea. §. 26.

Tea carried in the night.

By the 20 G. 3. c. 35. No person shall trade in or sell any coffee, tea, or chocolate, without first taking out a license for that purpose, for which he shall pay [by 43 G. 3. c. 69. *Schedule A.*] 5*s.* 6*d.*; the same to be granted, if within the limits of the chief office of excise in *London*, under the hands and seals of two commissioners, or of such persons as they shall appoint: elsewhere, under the hands and seals of the collectors and supervisors of excise respectively. Such license to be renewed annually, ten days at least before the expiration of the former. And if any person shall trade in or sell any coffee, tea, or chocolate, without such license, he shall forfeit 20*l.* Provided that persons in partnership and carrying

License to be renewed annually.

Persons in partnership.

rying on such business in one house or shop only shall not be obliged to take out more than one license; and that no license shall empower any person to sell the same, in any other house or place, than that wherein he shall dwell at the time of granting such license. *f. 13, 14, 15, 16.*

Houses of manufacturing and sale to be entered.

Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person dealing in coffee, tea, or cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any of the said goods into his possession make entry in writing of all store-houses and other places intended to be used by him for the keeping the same at the office for the division; on pain of forfeiting 200*l.* and the said goods found therein, with the canisters, bags, vessels, and other package. *10 G. c. 10. f. 10.*

No entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid shall be deemed a legal entry, unless made in the name of the real owner of and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. *18 G. 2. c. 26. f. 8.*

And none of the said goods shall be offered to sale but in places entered, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and also 10*l.* *10 G. c. 10. f. 14. 12 G. 3. c. 46. f. 6.*

Houses to be marked.

Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and every other person selling or dealing in coffee, tea, cocoa nuts, or chocolate, shall cause to be painted, or written in large legible characters over the door of each place, the words *dealer in coffee, tea, cocoa nuts, or chocolate*, (as the case may be), on pain of 200*l.* *19 G. 3. c. 69. f. 18.*

And if any dealer in tea, coffee, cocoa nuts, or chocolate, shall buy any of the said goods of any person not having the words aforesaid so painted or written, he shall forfeit 100*l.* over and above all former penalties: Provided, that such dealer shall not be subject to the said penalty by reason of any purchase or transfer of any tea, coffee, or cocoa nuts, whilst they remain in the warehouses according to the act of *10 G. c. 10.* nor by reason of any purchase at any sale of the *East India* company; or of the commissioners of the customs or excise; or sold for the benefit of the insurers or proprietors to defray the charges of salvage; nor by reason of any first purchase of any prize teas. *f. 19, 20.*

And if any person, other than such as have made due entry at the excise office of their several places for keeping any of the said goods, shall paint over his door the words
afore-

aforesaid, he shall forfeit 50*l.* over and above the penalties for selling or dealing without entry. *f. 21.*

If any person, not being such importer or dealer, shall buy or procure any other to buy any of the said goods (except as before excepted) not having the afore-mentioned words so painted, &c. he shall forfeit 10*l.*: And if the seller shall within 20 days, and before any information has been lodged against him, inform against the buyer, or the person procuring to be bought, he shall be discharged from all penalties to which he might be liable for such his own offence. *f. 22.*

No coffee, tea, cocoa nuts, or chocolate, shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate, signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate, have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entered with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned, on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 G. c. 10. *f. 11.*

Notice of bringing in.

Where any of them shall be sold in the said entered places above the weight of 6*lb.*, the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entered with the officer of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 G. c. 10. *f. 15.*

Permit when sold to the retailer.

The officers shall be permitted, at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales to be used by the officer, on pain of 100*l.* and forfeiture of the same, which may be seized by any officer. 10 G. c. 10. *f. 12.* 10 G. 3. c. 44. *f. 1.* 28 G. 3. c. 37. *f. 15.*

Officers to enter and survey.

Weights and scales.

If, in weighing his stock, he put any other substance therein, whereby the officer may be hindered from taking a just account, or shall forcibly obstruct such officer, he shall forfeit 100*l.* 26 G. 3. c. 77. *f. 8.*

Deceiving or obstructing the officer.

If any officer shall have cause to suspect that any coffee, &c. shall be concealed, if it be within the bills, then on oath made before two commissioners, or elsewhere before one or

Search for goods concealed.

more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100*l.* 10 *G. c.* 10. *f.* 13.

On suspicion.

If any seller or dealer shall conceal any of the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or shall after seizure break or damage the vessels or package, he shall forfeit 50*l.* *f.* 39, 40.

And by the 11 *G. c.* 30. Two commissioners or any justice, on complaint by an officer on oath that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20*l.* *f.* 12.

In the case of *Bostock v. Saunders* and another, *Tr.* 13 *G. 3.* 2 *Bl. Rep.* 912. and 3 *Wils.* 434, the Court of Common Pleas decided, that an action of trespass might be maintained against excise officers, who entered the house of the plaintiff (a dealer in tea) under a warrant from the commissioners of excise, granted on the oath of one of the defendants, setting forth the grounds of his suspicion that tea was fraudulently concealed in the house, to defraud the crown of the duties, &c., and which ground the commissioners adjudged to be reasonable, because on the search no such tea was found there.

But this opinion not being satisfactory in *Westminster Hall*, the same question was again brought forward, when the above decision was expressly overturned, in the following case, *Cooper & Cameron v. Boot* in error, *Tr.* 25 *G. 3.* *B. R.* That was an action of trespass, brought in the Common Pleas, for breaking and entering the plaintiff's house, &c. The defendant pleaded the general issue; and on the trial a special verdict was found. The plaintiff was a dealer in tea in the parish of *St. James*, in *Westminster*. The defendants were officers of excise; and suspecting that goods were fraudulently concealed in the plaintiff's house, they gave information on oath before the commissioners of excise, and obtained their warrant to enter and seize, &c. In pursuance of that warrant they entered the plaintiff's house, and, without his consent, broke open locks, &c., but they found no tea there

or other goods liable to be seized. The question was, whether the defendants were justified, not having found any thing there. The Court of Common Pleas, not seeing any difference between this case and that of *Boslock v. Saunders*, (above,) gave judgment for the plaintiff, without hearing any argument. It was removed into this court by writ of error; and the case was argued in *E. 25 G. 3.* by *Wood* for the plaintiffs in error, and *Plomer* for the defendant. The court took time to consider the case, and their opinion was now delivered by Lord *Mansfield* Ch. J. This comes before the court by a writ of error from the Common Pleas; that judgment was given upon a special verdict, on which that case appears to be exactly the same as that of *Boslock v. Saunders*. On the authority of that case the Court of Common Pleas gave judgment in the present, without hearing it argued. There is no occasion to state the facts now, they being exactly similar in both cases. The great authority of those who gave that opinion has made us deliberate, and turn the matter over and over again in our thoughts. But after all the deliberation we have taken, we cannot bring ourselves to concur in it. We think the excise officer cannot be guilty of a *trespass*; either as procuring or executing this warrant. If he either procured or executed the warrant maliciously or corruptly, on the ground of such motive he may be liable to a special *action on the case*. The question depends entirely on the act of parliament of the 10 G. 1. c. 10. s. 13. By that act a duty is imposed on officers of excise, who have grounds of suspicion to lay such grounds on oath before a proper magistrate, described in the act, viz. before commissioners of excise within the bills of mortality, or a justice of the peace in the country. A duty is also imposed on such magistrate to exercise his judgment on those grounds of suspicion, and if he think them sufficient, not otherwise, he is bound to grant a warrant. The judgment of the magistrate on this *ex parte* representation verified by oath is decisive as to issuing the warrant. The commissioners of excise undoubtedly had authority in this case; the warrant was clearly legal when it issued; the execution of it clearly legal when executed. Then it seems a solecism to say, that the regular execution of a legal warrant can be a *trespass*, though a bad motive in doing a legal act, or in executing legal process, may be a subject of a special action. Two objections have been made: first, that the event of not finding such goods as are searched for avoids the warrant in respect of the excise officer, and he is to be considered as a trespasser by relation, acting under no authority. This would repeal the act of parliament. The act is entirely adapted to the case of *probable suspicion*, the objection requires *positive*

certainty. The officer does not say he *knows* that the goods are in the house. If a man by warrant be arrested on suspicion of felony, it is not necessary that he should be found guilty on his trial. The case of a writ of assistance is not applicable here: It is no warrant; it is general; and leaves all and every part of the execution to the discretion of the custom house officer. And besides, there is a positive clause in the act of *Car. 2.* which makes the justification of the officer depend on the event of finding goods. Supposing a warrant to search for stolen goods to depend on the event of finding them, it must have been introduced as a political rule to prevent abuse, and is not a consequence drawn from principles. But on this point we give no opinion. This act is made expressly for the sake of the public, that the parties may proceed safely on reasonable grounds of suspicion; and the check against abuse is in the first instance the judgment of the magistrate. Suppose the goods were actually in the house when the information was made and taken out immediately before the warrant was executed; is it possible in that case to say, that the officer would be a trespasser? It is adding a clause which the legislature purposely avoided, with the example of such a provision in the stat. 12 *Car. 2.* before their eyes. The second objection is,—if it be too much to say that the validity of this warrant depends on the event of finding goods, that the grounds of suspicion ought to be laid before, and the sufficiency of it made appear to, the satisfaction of the jury who happen to try the cause; this equally repeals the act. The officer may be the only person who knows the facts from whence the suspicion arises; and in an action against himself, he cannot give in evidence reasonableness of suspicion; and it would leave so much latitude to the jury, that no officer could be safe. The act was made on purpose to remedy this inconvenience. The oath of the officer is made evidence of the truth of the fact; the reasonableness of suspicion is left to the magistrate to judge of; if it be sufficient, a warrant ought to be granted; if he think it insufficient, it should be refused. The regulation of the act is agreeable to the principles of justice and policy. The officer in this case is not merely a party, though interested if goods be found, but he acts as a public officer, in the execution of his duty. If he act *bonâ fide*, he ought to be protected. This act chalks out a way in which he may be safe. He swears as to his suspicion; and obtains his warrant. It is not left to the discretion of the officer to search when he pleases, but his power is subject to several restrictions, which there would be no occasion for, if it were requisite either that the goods should be found, or the officer obliged to bring the grounds of his suspicion before the jury.

jury. Where an officer acts *malá fide*, this act will not protect him; he is punishable by an action on the case. And therefore we cannot help being of opinion that the officer in this case is not a trespasser. And though we differ from great authority, we think that the regular execution of a legal warrant is not a trespass; but an officer may be liable to an action on the case for improper conduct. Judgment of Common Pleas reversed. *MSS.*]

No person in roasting, or soon after roasting or before selling, shall mix with coffee, to increase the weight, any butter, lard, grease, water, or other materials, on pain of 100l.; and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100l. 11 G. c. 30. s. 9.

True manufacturing of coffee.

The commissioners for inland duties may appoint houses for roasting coffee berries, and officers to attend them, and one or more persons at each house well skilled in roasting coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8s. per cwt. 10 G. c. 10. s. 31.

But the sellers and dealers may, if they think proper, send their own roasters, who shall be permitted to roast the same therein, paying 3s. per cwt. s. 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in some one such house, on pain of forfeiting the same, and 5s. a pound. s. 33.

If any officer or roaster duly appointed shall neglect or refuse to attend such house, he shall forfeit 10l. for the first offence, and 20l. for the second, and be incapable to hold any office in the revenue. s. 34.

[But by the 49 G. 3. c. 80. (reciting the 10 G. 1. c. 10.) it is enacted, that after the passing of this act all sellers of and dealers in coffee shall be at liberty to roast their own coffee, according to the following regulations, viz. every such seller, being desirous to roast coffee, shall, before he shall roast any coffee, make true entry in writing at the next office of excise, of one or more rooms for that purpose, which rooms respectively shall either be adjoining or as near as possible to the places by him entered and made use of for keeping raw coffee; and if any seller, &c. shall roast in any place whereof he shall not have made such entry, he shall, for every such offence, forfeit 50l., together with all the coffee which shall at any time be found in any such place whereof no such entry shall be made: Provided that no seller, &c. who shall at any time receive into his custody or possession any unroasted coffee, less in quantity than 56lb. except coffee returned to

Dealers in coffee may roast their own coffee on making entry at the next office of excise.

Penalty for not making entry 50l.

Dealers receiving into their custody unroasted coffee, in less quantity than

56lb. shall not be permitted to roast coffee.

Penalty 50l.

Officers of excise may enter the premises of dealers,

and may take samples of coffee.

Penalty for refusing samples.

The powers granted by 10 G. 1. c. 10. relating to houses for roasting of coffee, &c. not repealed.

Commissioners may permit the use of the present roasting houses till Oct. 10, 1809.

him by any customer for being disliked, shall be at liberty to roast, or put in operation of roasting, any coffee; and if any feller, &c. shall contrary to this act, roast, or put in operation of roasting, any coffee, he shall, for each offence, forfeit 50l. together with all such coffee by him so roasted, &c.

§ 2. And it shall be lawful for the officers of excise, or any of them, at all times, by day and by night, upon his or their request (but if in the night in the presence of a constable, or other peace officer), to enter into every room entered or made use of by any such importer, feller, or dealer in coffee, for the purpose of roasting or burning coffee, and to examine, weigh, or take account of all the coffee, either raw, roasting, or roasted, which shall at any time be in any such room, and to remain in any such room during the time that any coffee shall be in the operation of roasting.

And by § 3. the officers of excise may take, at any time and times, a sample or samples of any coffee, either raw, roasting, or roasted, which they shall at any time find in any such room, paying for every such sample the usual price thereof; and in case any feller, &c. or any workman or servant to him belonging, shall refuse to permit such officer to take such sample or samples as aforesaid, upon his offering to pay as aforesaid, or shall anywise hinder him in taking such sample or samples, such feller, &c. shall, for every such offence, forfeit 100l.

By 51 G. 3. c. 95. § 2. reciting that doubts had arisen whether by the 49 G. 3. c. 80. the powers given to the commissioners for the inland duties upon coffee, by 10 G. 1. c. 10. to provide houses for the roasting of coffee, and to appoint officers for attending the same, and persons well skilled in the roasting of coffee to attend at each such roasting house for that purpose, were not repealed: it is enacted, that none of the powers and authorities given to the said commissioners by the said 10 G. 1. c. 10. relating to houses for the roasting of coffee, or to the money payable for the roasting of coffee at any such houses, were by the 49 G. 3. c. 80. repealed: Provided always, that nothing herein-before contained shall extend to repeal any of the provisions of the said act relating to sellers of or dealers in coffee being at liberty to roast his own coffee, under the regulations in the said 49 G. 3. c. 80. or to forfeit any coffee roasted, burnt, or dried, under or according to the regulations of the said act, in any place, other than in some one of the houses provided, as in the said 10 G. 1. is mentioned.

49 G. 3. c. 80. § 4. Provided that nothing in this act shall prevent the commissioners of excise, or the major part of them, from continuing the present roasting houses for coffee, and permitting and allowing the respective dealers in and sellers

sellers of coffee having their coffee roasted at such roasting houses as heretofore, until and upon the 10th day of *October*, 1809.

And by *f. 5.* If any person shall molest or hinder any officer of excise in due execution of this act, or of any of the powers hereby granted, other than in any case for which a penalty is herein-before specifically imposed, he shall, for every such offence, forfeit 100l.

Penalty on obstructing officers, 100l.

And by *f. 7.* All fines, penalties, and forfeitures, imposed by this act, shall be sued for, levied, recovered, and mitigated, as any fine, &c. may be recovered or mitigated, by any law of excise, or by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, one moiety to his majesty, the other moiety to him who shall discover, inform, or sue for the same.

How penalties shall be levied and recovered.

And from the 1st of *Sept.* 1803, *f. 3.* of 41 *G. 3. U. K. c. 91.* (which respected imitations of coffee) is repealed, if any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, prepared for the purpose of being an imitation of, or in any respect to resemble, coffee or cocoa, or to serve as a substitute for the same, or pretended by the possessor or vendor thereof so to be, shall be made or kept for sale, or offered or exposed to sale, or found in the possession of any dealer in or seller of coffee or cocoa, or of [q^r. if ?] any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, not being coffee or cocoa, shall be called by the preparer, possessor, or vender thereof, by the name of *English* or *British* coffee, or any other name of coffee, or by the name of *American* cocoa, or *English* or *British* cocoa, or any other name of cocoa, the same shall be forfeited, together with the packages, and shall be seized by any excise officer; and the person preparing or selling the same, or having the same in his possession, or the dealer in or seller of coffee or cocoa, in whose custody the same shall be found, shall forfeit 100l. 43 *G. 3. c. 129. f. 5.*

If any article made to resemble coffee, or cocoa, be found in the possession of any dealer, or called by him *English* or *British* coffee, &c. it shall be forfeited and the dealer forfeit 100l.

No dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate it, or alter or manufacture it with any drug, or mix it with any leaf or other ingredient, on pain of forfeiting the same, and 100l. 11 *G. c. 30. f. 5.*

True manufacturing of tea.

By the 4 *G. 2. c. 14.* If any dealer in or seller of tea shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any other tree, shrub, or plant, in imitation of tea, or shall mix, colour, or stain, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients; or shall sell, or offer to sale, or have in his custody, any such leaves in imitation of tea,

tea, or any such stained leaves, or tea mixed with any other ingredient, he shall forfeit for every pound weight the
10l. *s.* 11.

By the 17 G. 3. c. 29. If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, and shall be thereof convicted upon the oath of one witness, before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dying or manufacturing, in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 5l.; and on non-payment thereof, such justice shall commit him to the common gaol, for any time not exceeding twelve months nor less than six, or until the penalty and charges shall be paid.
s. 1.

And if any person shall have in his custody any quantity (exceeding 6lbs. weight) of sloe leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice before whom the matter shall be heard, that such leaves were gathered with the consent of the owner of the trees, shrubs, or plants, from which the leaves were taken, and that such leaves were gathered for some other use, and not for the purpose of manufacturing them in imitation of tea, and shall be convicted thereof by the oath of one witness, before one justice, he shall, for every pound of such green or manufactured leaves so found in his custody, forfeit the sum of 5l.; and on non-payment thereof, the justice shall commit him to the common gaol, for any time not exceeding twelve months nor less than six, or until the penalty and charges shall be paid.
s. 2.

If any excise officer or other person shall have cause to suspect that any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, or intended so to be dyed or manufactured, shall be concealed or lodged in any place; in such case, on oath made before a justice, setting forth the ground of his suspicion, the justice may, if he judge it reasonable, by his special warrant, authorize such officer or other person, by day or night, but if in the night then in the presence of a constable, to enter such place, and to seize
and

and carry away as forfeited all such leaves, together with all the waggons, carts, boxes, bags, tubs, or other vessels or package, containing the same: And the said justice, or any other justice where such seizure shall be made, shall, on proof of the premises by the oath of one witness, by his warrant, order the leaves so seized to be conveyed to some convenient place, and there to be burned or otherwise destroyed; and shall order the said waggons, &c. containing the same to be forthwith sold, and the money arising by such sale, after deducting the charges of seizure and sale, and of the burning or otherwise destroying the leaves, to be paid half to the informer and half to the poor. And if any person shall obstruct such officer, he shall forfeit 50*l.* on conviction, by the oath of one witness, before one justice; and on non-payment, the justice shall commit him to the common gaol for any time not exceeding twelve months or less than six, or until the penalty and charges shall be paid. *f. 3.*

Provided that no such green and unmanufactured leaves shall be burned or otherwise destroyed, if the owner thereof shall, within 24 hours after seizure, prove, to the satisfaction of the justice, that the said leaves were gathered with consent of the owner of the trees, shrubs, or plants, and that they were gathered for some other use, and not for the purpose of drying or manufacturing them in imitation of tea; in which case the said leaves, carriages, and package, shall, by order of such justice, be restored. *f. 4.*

And all such leaves shall be deemed in the custody of the occupier of the house or place where the same shall be found; and such occupier shall be liable to all the penalties by this Act inflicted on persons having such leaves in their possession, if it be proved, to the satisfaction of the justice, that such leaves were lodged there with the privity or consent of the said occupier. *f. 5.*

The said forfeitures shall be distributed one-half to the informer, and the other half to the poor of the parish or place where the offence shall be committed; in which case, nevertheless, an inhabitant of the parish where the offence shall be committed may be a witness. *f. 6, 7.*

The conviction shall be written on parchment or paper in this or the like form: *Be it remembered, that on the — day of — in the — year — A. O. was upon complaint of A. I. convicted before me one of the justices of the peace for — in pursuance of an act passed in the seventeenth year of the reign of his majesty king George the third, for [Here set forth the offence]. Given under my hand and seal the day and year above written: And shall be certified by the justice to the* next

Conviction.

True manufac-
turing, and
stamping of
chocolate.

next sessions; and shall not be quashed for want of form nor removed by *certiorari* into his majesty's court of king's bench. *f. 9.*

The maker or proprietor of chocolate, if within the bills shall weekly, and elsewhere every six weeks, make entry in writing at the next office of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50*l.* for every neglect. Which entry shall be upon oath of the maker or proprietor or his chief workman, or servant according to the best of his knowledge and belief, to be administered within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further than the next market town to make entry. *10 G. c. 10. f. 17.*

And he shall in one week within the bills, and elsewhere in six weeks, after entry, clear off the duties, on pain of 50*l.* besides the duty; and he shall after default in payment sell or deliver none out till the duty is paid, on pain of treble value. *10 G. c. 10. f. 18.*

And he shall at the time and place of entry produce the same so made (on pain of 20*s.* for every pound not produced) which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and no more or less; which shall be marked or stamped by the officers. *32 G. 2. c. 10. f. 16.*

If any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver any chocolate not being duly marked or stamped; or not inclosed and tied up with the identical piece of thread directed to be used in tying up the same before it was stamped; or shall sell and deliver any chocolate, whereof the thread and stamped label inclosing the same shall have been broken or opened he shall forfeit 20*l.* *f. 17.*

If any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall on chocolate, for which no entry hath been made, not the duties paid, fix any paper with the stamp on; he shall forfeit 50*l.* and be committed to the next county gaol for twelve months. *10 G. c. 10. f. 22. 11 G. c. 30. f. 13.*

If any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamp to the officer, and work it over again with fresh cocoa nuts and have it restamped, paying duty for what is added *11 G. c. 30. f. 14.*

But on re-working, proof shall be made (before the commissioners (within the bills,) and before two justices else

there,) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have been paid, and the chocolate entered. *f. 15.*

If any person shall be minded to make chocolate for his own family, and not for sale, and shall give notice thereof under his hand to the officer of the division 3 days before he begins to make, specifying the weight or quantity of cocoa nuts designed to be made into chocolate, the name of the person to be employed in the making, and the place where; the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. *10 G. c. 10. f. 23.*

Chocolate made for private families.

And the person for whom it is made shall in three days after finishing make entry on oath with the officer of the whole quantity then made by virtue of such permit, and bring the same wrapt up as before, to have it stamped, and shall pay the duty; and in default thereof, shall forfeit the same, and treble value. *f. 24.*

No person shall be permitted to make into chocolate for his own private use less than half a hundred weight of cocoa nuts at a time. *f. 25.*

If any person shall offer any tea to sale, not having a permit; or if any hawker, pedlar, petty chapman, or other trading person, going from town to town or other men's houses, and trading either on foot or with any horse or other cattle or otherwise, shall offer any such tea to sale, although he have a permit; the person to whom it is offered to sale, may seize and detain the same, and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer: And after condemnation and commitment, the person seizing shall have one-third of the gross produce by sale; and if he desire it, the commissioners shall in the meantime till the goods can be publicly sold, cause 1s. for every pound of tea, &c. to be advanced to such person, upon certificate of the justice, of the commitment. *9 G. 2. c. 35. f. 20.*

Penalty of retailing tea without a permit, or pedlars with one.

No coffee, tea, cocoa nuts, or chocolate, above 6lbs. weight shall be removed from any part of the kingdom without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the inland duty hath been paid or the cocoa nuts entered as aforesaid, or that they have been condemned as forfeited; on pain of forfeiting the same, together with the canisters, bags, or other package; which permit

Permit on removal.

mit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force. 10 G. c. 10. s. 16.

If any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50l. And in default of payment, he shall be imprisoned three months. 11 G. c. 30. s. 10.

Dealers to mark
their canisters,
&c.

And for the better distinguishing the species of the tea to be contained in the said permit, all dealers in and sellers of tea, who shall receive into their custody any *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea, shall mark every canister, bag, jar, tub, box, cask, or other package containing the same, with the word BLACK; and shall mark every canister, bag, or other package in which they shall keep any other kind of tea, not being *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea, with the word GREEN. And for avoiding all doubts concerning the said two kinds of tea distinguished by the names of *Black tea* and *Green tea*, it is hereby declared that by the term *Black tea* is meant all such teas as are usually known by the name of *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea; and that by the term *Green tea* is meant all teas not being such *Bohea*, *Congo*, *Souchong*, or *Pekoe* tea. And the permit granted by such officer shall distinguish the same accordingly. 12 G. 3. c. 46. s. 1, 2. 5.

Increase since
the last survey.

The officer of excise who shall survey and take account of the stock of tea at the warehouses, storehouses, shops, cellars, or other places of persons being dealers in and sellers of tea shall keep a separate and distinct account of the *Black tea* and *Green tea*; and if he shall find any increase either of *Black tea* or *Green tea* in custody of any such dealer or seller, the same shall be taken to be made by tea for which no duty hath been paid, and privately brought in without a permit: And so much of either of the said sorts as shall be found to be so increased shall be forfeited, and seized by the officer, unless the owner shall make it appear that the increase was made by tea brought in with a permit or certificate of the payment of the duties thereof. *Id.* s. 3.

All sellers and dealers in any of the said goods, and all makers of chocolate and coffee or chocolate-house keepers, who shall consume the same in small quantities under 6lbs. shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them in that day in small quantities under 6lbs.; and shall keep another book wherein they shall enter each parcel above 6lbs., which they shall sell in each day, which last shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and whither it is to be carried, and that the duties were paid, or the cocoa nuts entered, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said books shall from time to time lie open, and be perused by the officer: And such seller or dealer shall on neglect or false entry made, forfeit 10*l.* 10*s.* 3*d.*

Account to be kept of small quantities consumed.

(But by the 12 *G. c.* 28. No dealer in cocoa nuts shall dispose of less than 28lbs. at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer and permit him to account of such name, &c.; on pain of 2*l.* for each pound of cocoa nuts otherwise disposed of, and of 2*l.* for default about the entry. *s.* 29.)

Such dealers in and sellers of tea shall in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of Black tea and Green tea by them consumed, retailed, or sold on each day; on the like pain of 10*l.* as aforesaid. 12 *G. c.* 3. *s.* 46. *s.* 4.

If any such dealer in coffee, tea, or cocoa nuts; or maker or seller of chocolate, shall conceal the same from the view of the officer with intent to defraud his majesty, he shall forfeit the same, and treble the value thereof, and also all canisters and package containing the same. 10*G. c.* 10. *s.* 39.

Dealers concealing coffee, &c.

If any person shall assault or hinder any officer of the customs or inland duties in seizing or securing any coffee, tea, cocoa nuts, or chocolate; or shall by force rescue the same after seizure, or attempt so to do; or shall break or damage any vessel or package containing the same, he shall forfeit 5*l.* *s.* 40.

Obstructing officers, or rescuing coffee, &c.

And if any person shall obstruct any officer in the execution of his duty, or shall rescue any coffee, or cocoa nuts which have been seized, or attempt so to do, where no penalty

nalty is particularly provided ; he shall forfeit 100*l.* 35 *G. 3. c. 118. f. 22.*

Power of the
justices.

All the said penalties and forfeitures (except were herein otherwise directed) shall be recovered and mitigated as by the laws of excise (*a*) or in the courts at *Westminster* ; and be employed half to the use of the king, and half to the informer. 10 *G. c. 10. f. 41.* 11 *G. c. 30. f. 39.* 4 *G. 2. c. 14. f. 10.* 18 *G. 2. c. 26. f. 14.* 24 *G. 2. c. 40. f. 33.* 43 *G. 3. c. 68. f. 45.* [*c. 69. f. 4. customs.*]

And by the 12 *G. c. 28.* The penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *f. 33.*

By 35 *G. 3. c. 118.* All the penalties by this act imposed, and sued for by the officers of the customs, shall be recovered as by the laws of customs. And all penalties which shall be sued for by the officers of excise may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster* ; half to the king, and half to him who shall sue. *f. 23, 24.*

Proof to lie on
the claimer.

And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 *G. c. 10. f. 28.*

Condemnation
and sale.

The commissioners shall cause all tea and coffee seized in *London* and condemned to be sold there ; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London.* 12 *G. c. 28. f. 1.* Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. *f. 16.*

But if they think fit, they may cause such tea as cannot be sold at a public sale for 5*s.* a pound to be burnt or otherwise destroyed ; and the person making seizure to be rewarded as they shall think proper, not exceeding 1*s.* 6*d.* for each pound of such tea. *f. 3.*

Utensils liable.

All stock and utensils found in the shops or other places aforesaid shall be liable to the duties and forfeitures. 18 *G. 2. c. 26. f. 8.*

Sect. V. (6.) *Glasf.*

[19 *G. 2. c. 12. f. 3.* 10—15. 17—19. 23. 39.—10 *G. 3. c. 44.*—17 *G. 3. c. 39. f. 25.* 27. 31—34. 37, 38. 41.—24 *G. 3. c. 41. fess. 2. f. 1.* 7, 8.—27 *G. 3. c. 28. f. 12, 13.*—28 *G. 3. c. 37.*—32 *G. 3. c. 40. f. 1—4.* 7—9. 11.—35 *G. 3. c. 114. f. 1—27.*—38 *G. 3. c. 33. f. 6, 7, 8.*—39 & 40 *G. 3. c. 45.*—43 *G. 3. c. 69.*—47 *G. 3. fess. 2. c. 30. f. 16.*—49 *G. 3. c. 63.*—51 *G. 3. c. 69.*—52 *G. 3. c. 54.]*

(a) For which see *ante*, 46 *G. 3. c. 112.*

No glafs shall be imported into *Ireland* other than the *Importation.*
 manufacture of *Great Britain*; on pain of forfeiting the
 same, and the ship, and 10s. a pound. 19 G. 2. c. 12.
 f. 19.

And if any foreign glafs shall be landed or unshipped with
 intent to be put on shore, before entry and payment of the
 duties, or without a warrant from the proper officer; the
 same shall be forfeited or the value thereof and may be
 seized or recovered of the importer or proprietor by any
 officer of the customs or excise; and moreover the master or
 other person having command of the vessel, and every other
 person concerned in such landing or unshipping, shall forfeit
 100l. 17 G. 3. c. 39. f. 25.

By 38 G. 3. c. 33. To prevent the fraudulent importation
 of glafs, every package containing any plate or plates of
 glafs unframed, being *plate*, *crown*, or *sheet* glafs, which
 shall be imported, or which shall be brought into this king-
 dom for the purpose of exportation, shall be marked on the
 outside thereof in Roman letters four inches long at least
 with the word GLASS; on pain of forfeiture thereof, toge-
 ther with the package, and all goods or merchandize con-
 tained therein. f. 6.

And the master of every vessel in which any such glafs
 shall be imported, shall, in the report of his ship's cargo, ex-
 press every such package of glafs; on pain of forfeiting the
 same, and also 100l. f. 7.

No such glafs shall be imported in any package, which
 shall not contain 5cwt. net, at least, on forfeiture thereof :
 Provided that this act shall not extend to forfeit any plate of
 glafs 60 inches in length or upwards, on account of the
 package not being marked as aforesaid. f. 8.

[By 43 G. 3. c. 69. & 49 G. 3. c. 98. Several duties of
 excise and customs and were imposed upon the several kinds
 of glafs.

And by the 49 G. 3. c. 63. The former duties upon
 crown glafs and broad glafs were repealed, and new duties
 were imposed. f. 1, 2, 3.]

And every *glafs-maker* shall take out a license, for which *Glass-makers to*
 he shall pay 10l. and shall renew the same annually, ten days *be licensed.*
 at least before the end of the year, on the penalty of 50l.
 24 G. 3. c. 41. *sess.* 2. f. 1. 7. 43 G. 3. c. 69.

Such license does not empower the glafs maker to work in
 any other house, than that for which the license was taken
 out. 24 G. 3. c. 41. *sess.* 2. f. 8.

But one license is sufficient for partners carrying on busi-
 ness in one house. *Id.*

Place of making
to be entered.

And every maker of glafs shall after 5th July 1795 (a) before he begins to make any glafs or mix or prepare any materials, make entry in writing at the next excise office of all work-houses, furnaces, pots, pot chambers, annealing arches, ware-houses, rooms, and other places by him intended to be used for the making or keeping of glafs, or pots, or materials mixed and prepared for making of glafs; on pain of forfeiting 200l. for every workhouse, &c. 17 G. 3. c. 39. f. 27. 35 G. 3. c. 114. f. 1. 39 & 40 G. 3. c. 45.

Officers may
enter and survey
and mark pots.

The officers of excise by day or night, upon request, may enter into every workhouse, warehouse, or other place, entered or made use of by any maker for the making, preparing, or keeping materials for the making of glafs, or for the making or keeping of glafs, or of pots for the making of glafs, and examine and take an account of the metal and materials there mixed and prepared for the making of glafs, either before or after the same is put into the pots, and of all glafs there made or making; and also may take an account of the capacity or content of each pot, and shall mark and number every such pot as he shall think fit; and if any person shall counterfeit or alter any such mark, or connive at the same being done, he shall forfeit 500l. And if any person shall wilfully deface or obliterate any such mark, or cause or connive at the same being done, he shall forfeit 200l. 35 G. 3. c. 14. f. 2.

The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making glafs; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand for the glafs maker; and if he shall not leave such copy on demand, he shall forfeit 40s. 10 G. 2. c. 12. f. 9.

Notice of begin-
ning to work.

Every maker shall, four hours before he begins to light any fire to heat his annealing arch, give to the officer under whose survey he is, notice in writing of his intention so to do, specifying therein every pot set in such annealing arch, with the number marked by the officer on such pot; on pain of forfeiting 20l. f. 3.

And he shall, before he begins to fill any pot, give 12 hours notice in writing to the officer of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glafs to be made in each

(a) This act was at first temporary only, but by 39 & 40 G. 3. c. 45. the same is made perpetual.

pot ; on pain of 50*l*. And if the filling be not begun pursuant to such notice, the said notice shall be void. 19 G. 2. c. 12. *f*. 12. 17 G. 3. c. 39. *f*. 33.

If, after notice given, and a gage taken by the officer, he shall put into any pot any material or preparation, he shall forfeit 50*l*. 17 G. 3. c. 39. *f*. 33. 19 G. 2. c. 12. *f*. 8.

No maker shall, after any pot has been set in the furnace, begin to fill the same with metal or preparations for the making of glass, until the officer shall have previously examined and gaged such pot, after the same has been set up in the furnace as aforesaid ; on pain of forfeiting 50*l*. 35 G. 3. c. 114. *f*. 4.

No pot to be filled till gaged.

And that the officer may be enabled without inconvenience to ascertain whether, after notice given and a gage taken, and without fresh notice in writing, any metal, material, or preparation has been put into any pot, no maker shall, during a quarter of an hour after the officer shall have entered the glass house, and shall have forbidden the same, stir or break up the fire, or add fresh coals or fuel thereto, in any furnace or annealing arch ; or wilfully raise any smoke, or other noisome or offensive vapour, whereby the officer may be hindered or obstructed in gaging or examining any pot, or in examining the metal or materials in such pot, or in gaging or ascertaining the quantity, or in examining or counting the vessels, utensils, or wares in any annealing arch ; on the penalty of 100*l*. *f*. 5.

Fire not to be stirred, &c. to obstruct the officer.

And the officer may at all times unstop or take down any stopper from any pot, for the purpose of examining, gaging, or taking an account of the materials in such pot. *f*. 6.

Officers may unstop pots to gage materials.

By 47 G. 3. *sess* 2. c. 30. *f*. 16. reciting the 19 G. 2. c. 12. and the method prescribed therein of taking an account of metal and materials for making glass after being put into the pots, and reciting that since that act it had been the invariable practice of the officers of excise to take such account of the quantity after the same had been put into such pots according to the following method ; viz. to gauge and ascertain the dimensions of every such pot, before the same had been set in the furnace, and therefrom to calculate the quantity which every such pot was capable of containing at every inch, $\frac{1}{2}$ inch, $\frac{1}{4}$ inch, and fractions of an inch, and to ascertain the weight or quantity of the metal or materials at any time contained in such pot, for the making of crown or any other species of glass, by gauging or measuring the dry inches, or unfilled and unoccupied space or distance between the top, rim, edge, or lip of such pot in the furnace, and the surface of the fluid, metal, or materials in such pot, and deducting the quantity of metal or materials which this space denoted by such dry inches, or the unfilled and unoccupied

part of fuch pot appeared, by fuch original guage or calculation, capable of containing from the quantity of metal or materials, which, according to fuch original guage or calculation, the whole pot was denoted to be capable of containing; and reciting that doubts had arifen whether this method were warranted by law, enacted, that in fuch cafe the quantity fhould be deemed to be as by the recited method it is denoted to be, and the officer of excife fhall make a report thereof in writing to the refpective commissioners of excife, or thofe appointed by them to receive the fame, and fuch report to be a charge upon fuch maker.

Glasf makers to make entry of the lears to be ufed by them.

By 51 G. 3. c. 69. f. 5. Every maker of glafs, before he fhall begin to anneal any glafs or glafs wares whatfoever, fhall make particular entry in writing of every lear by him intended to be ufed for the annealing of glafs, at the office of excife within the compafs or limits whereof fuch lear fhall be, on pain of 200l. for every fuch lear which he fhall fo ufe without having made fuch entry.

Makers of common glafs bottles, &c. in diftinct houfes, to give a declaration thereof.

If any maker of *common glafs bottles* fhall be defirous of making common bottles or other veffels or utensils of *common bottle metal only* in any diftinct and feparate glafs houfe and building, and fhall deliver to the furveyor or fupervifor of the divifion where fuch glafs houfe is fituat a declaration in writing of his being defirous to be charged with and pay the faid duty according to the weight of the bottles (a), and fhall fpecify the particular glafs houfe and building in which he is defirous of making the fame; in fuch cafe, the officer fhall not charge the duty from any gage taken by him in any pot of materials or preparations ufed by fuch maker. 35 G. 3. c. 114. f. 7.

Declarations to remain in force for fix months at leaft.

Provided always, that fuch declaration fhall be in force for fix months at leaft from the time of the delivery thereof, and from thenceforth until the fame be revoked or withdrawn by a note in writing, delivered by fuch maker to the furveyor or fupervifor of the diftrict. *Id.*

Annealing arches to be made of a certain form, and to be numbered.

Every fuch maker, having delivered fuch declaration, fhall build and conftitute every annealing arch or oven intended to be ufed for the annealing of common glafs bottles, in a rectangular form, with the fides and ends thereof perpendicular and parallel to each other refpectively, and the bottom thereof level, and with only one mouth or entrance, and fhall number the fame progressively with a durable mark; on pain of forfeiting 100l. f. 8.

(a) Under the word *bottles* is to be underftood alfo all other *veffels* or *utensils* made of *common bottle metal*, unlefs otherwife expreffed.

Every such maker shall, at his own expence, provide and affix a sufficient iron grating to the mouth of his annealing arch and oven, to be approved of in writing under the hand of the surveyor or supervisor: and proper locks and keys and all other necessary fastenings, for securing and sealing such annealing arch and oven, and the mouth and iron grating thereof, shall be provided by the surveyor and supervisor, at the expence of such maker; and every annealing arch or oven, and the mouth and iron grating thereof, shall be securely locked, fastened, and sealed by the officer at all times except when such maker shall be at work, in putting in bottles or shall be opened by the proper officer in pursuance of such previous notice as is hereinafter directed for the purpose of lighting a fire for the annealing or for the drawing out the bottles, or repairing the arch: And if any such maker shall neglect or refuse at his own expence to provide such iron grating, or to affix the same in manner aforesaid; or to pay for any lock, key, or other necessary fastening provided by such surveyor or supervisor; or if any person shall obstruct or hinder any officer or person by him employed in fixing such fastening, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or iron grating thereof, or fastening as aforesaid; or by any means or contrivance whatsoever, shall open any such lock, or annealing arch or oven, or the mouth or iron grating thereof, before the same shall have been unlocked and opened by the officer; or shall wilfully break or damage any such lock, seal, or fastening, he shall for every such offence forfeit 200*l.* *s.* 9.

Provided always, that no such annealing arch or oven shall remain unlocked or open for any purpose or for any pretence whatever (except for repairing when empty), for more than 24 hours from the time when opened by the officer, who may, at the end of such 24 hours, lock, fasten, and seal such annealing arch and oven, and the mouth and iron grating thereof. *Id.*

And where locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom the same shall belong shall, when required by the surveyor or supervisor, immediately alter, repair, and amend the same according to such requisition; on pain of forfeiting 100*l.* *s.* 10.

And when any such maker having delivered such declaration shall be desirous to light any fire to heat his annealing arch or oven, he shall give to the officer 12 hours' notice in writing, and such officer shall attend at the time, and unlock and open such annealing arch or oven, and the mouth and iron grating thereof; and if such maker shall neglect or refuse to light such fire within one hour, such notice shall be

Iron gratings to be fixed.

Locks, &c. to be provided by the officer, at the expence of the maker.

Annealing arches to be locked, except at certain times.

Penalty on obstructing officers, or opening such locks.

Annealing arch not to remain open more than 24 hours, except for repairs.

Locks, &c. to be altered and repaired, when required by the officer.

Makers to give 12 hours notice of their intention to heat annealing arches.

Officers to attend and unlock them.

Fire to be lighted within an hour.

Bottles when blown to be removed into the annealing arch.

Bottles of different makings not to be put therein at the same time, nor any other sort of glass.

The whole metal intended to be manufactured, to be worked within 16 hours.

And the pots to be again charged.

A declaration of the number of bottles to be delivered.

Penalty.

Exception.

Beginning to work, deemed beginning to work the whole then charged.

Scales and weights.

void, and such officer shall again lock up, fasten, and seal the same, and such maker shall give a like and fresh notice before the same shall be again opened. *f. 11.*

Every such maker having delivered, &c. shall, when any such common glass bottles are blown or made, remove the same directly into such annealing arch or oven, and shall there deposit the same in such manner as such officer shall approve, and so that the same may the most easily and securely be viewed and examined, and the number and kinds thereof ascertained in each annealing arch or oven; and no such maker shall at one time put or keep in any such annealing arch or oven any common bottles of different makings, or fillings of the pots; nor put or keep any other sort or species of glass or glass wares whatever or any phials in any such annealing arch or oven, entered or made use of for the annealing of common bottles; on pain of forfeiting 50*l.* *f. 12.*

And every such maker, having delivered, &c., and having begun to work any common bottle metal from out of any pot, shall, without any unnecessary delay or interruption, continue to work out all the pots then charged, and shall finish the working out thereof within 16 hours after he began, and as soon as such metal shall be so worked out as aforesaid, and the bottles put into the annealing arch or oven, such maker shall, in the presence of the officer, again charge every such pot with fresh materials or preparations, (other than cullet or broken glass,) not less than 50*lb.* weight; and shall also deliver to such officer a declaration in writing, specifying the true number of bottles, and whether the same are reputed quart or pint bottles, or bottles of any other and what reputed measure, and the number and kinds of any other vessels or utensils of common bottle metal contained in every such annealing arch; on pain of forfeiting 10*l.* *f. 13.*

Provided that no such maker shall be liable to the said penalty by reason of his not delivering a true declaration as aforesaid, if the same shall not differ from the number of bottles, vessels, or utensils in any such annealing arch, in a greater proportion than 5 in 100. *Id.*

Every maker who shall have begun to work any common bottle metal out of any pot shall be deemed to have begun to work out the common bottle metal out of every pot at that time charged with materials for making common bottles within the same glass-house, or building. *f. 14.*

And every such maker shall keep sufficient scales and weights at the place where he shall manufacture such bottles, and shall, at his own expence, affix a proper hook or staple in a proper place, to be approved of under the hands of the surveyors or supervisors of the division, and shall suffer any officer to use the same; on pain of forfeiting 50*l.* *f. 15.*

If any such maker shall, in weighing any such common glass bottles, make use of any false, unjust, or insufficient scales or weights, or shall practise any art or contrivance by which such officer may be hindered from taking a true weight; he shall forfeit 100l., and also such scales and weights, which may be seized by any officer. *Id.*

Using false weights, or deceiving the officer.

Every such maker, having delivered, &c. being desirous to take any glass bottles out of any annealing arch or oven, shall, 12 hours before he shall begin, give to the officer notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such bottles, and the hour at which he intends to begin; and such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch and oven, and attend to see such bottles taken out; and such maker shall immediately, on such officer's attendance, begin and continue without any unnecessary delay to take out the whole of the bottles within four hours from the time of beginning; and such maker shall immediately proceed to weigh the same in the presence of such officer, and shall be charged with and pay the duty according to such weight; on pain of forfeiting in each such case 100l. And if any such maker, having given such notice, shall not immediately begin when such annealing arch or oven is so opened, such notice shall be void, and such officer shall immediately again lock up and seal the same in manner aforesaid, and such maker shall be obliged to give a fresh notice. *f. 16.*

Twelve hours notice to be given of taking bottles out of the annealing arch.

Officers to attend.

The whole to be taken out within four hours, and to be weighed.

If such makers do not immediately begin, fresh notice to be given.

Provided, that no such maker shall be liberty to give any such notice except in the day time, and between eight in the morning and six in the afternoon, and every other notice shall be void. *Id.*

Within what hours such notice shall be given.

Provided also, that in weighing common glass bottles the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to such maker 1lb. upon every 100lbs. *f. 17.*

Allowance for the turn of the scale.

Every such maker shall assist, to the utmost of his power, with a sufficient number of his servants, such officer in weighing and taking an account; on pain of forfeiting 50l. *f. 18.*

Makers to assist.

The allowance made by 17 G. 3. c. 39. of $\frac{1}{5}$ part of the metal or other materials contained in pots for making common bottles is repealed. *f. 19.*

Allowance by 17 G. 3. repealed.

If any such maker, having delivered, &c., shall convey away any common glass bottles from any annealing arch or oven before the same be weighed, or shall neglect or refuse to produce the same to such officer to be weighed; he shall forfeit 100l. *f. 20.*

Bottles not to be removed till weighed.

Bottles weighed and unweighed to be kept separate.

Using private annealing arches or concealing bottles unweighed.

No phials, &c. to be made in places entered for making common glass bottles.

Upon suspicion that bottles have been removed before weighed, officers by warrant may search suspected places.

Obstructing such officers.

Obstructing officers in their duty.

Officers may gage materials and take samples.

Every such maker having delivered, &c., shall keep all common glass bottles which have not been weighed separate from those that have been weighed, and from all other glass wares whatsoever; on pain of forfeiting 50*l.* *s.* 21.

If any such maker having delivered, &c. shall use any private or concealed annealing arch, oven, utensil, or place, other than those entered, or shall fraudulently remove or convey away any common glass bottles before the same have been weighed; or hide or conceal the same; he shall forfeit 50*l.* *s.* 22.

No such maker having delivered, &c., shall make within the same glass house entered or used for making common bottles, or in any building thereto adjoining, any phials or other sort of glass or glass ware, except common bottles and other vessels and utensils of common bottle metal, which vessels and utensils shall be such only as were immediately before the passing of this act usually made of common bottle metal; on pain of forfeiting 20*l.* *s.* 23.

If any officer shall suspect that any common glass bottles have been fraudulently conveyed away before the same have been weighed, and are deposited, hid, or concealed in any place whatsoever, if within the limits of the chief office in *London* upon oath made by such officer before two commissioners of excise, elsewhere before one justice, setting forth the ground of his suspicion, such commissioners or justice may by special warrant empower such officer by day or night (but if in the night in the presence of a constable) to enter such suspected place, and to seize and carry away all such common glass bottles, or other such vessels there found, as forfeited. And if any person shall obstruct such officer, or any person acting in his aid, in the execution of such warrant, he shall forfeit 20*l.* *s.* 24.

If any person shall obstruct any officer in the execution of any powers given to him by this or any other act relating to glass, he shall (except where other penalties are herein imposed) forfeit 20*l.* *s.* 25.

Provided, that nothing herein contained shall extend to make it unlawful for any officer at all times to inspect, examine, gage, or otherwise take an account of the materials mixed and prepared for the making of glass in any glass house, as well before the same shall be put into any pot as after, or to take samples, not exceeding four ounces in the whole out of each pot or other vessel, containing such preparation. *s.* 26.

And the gauger or other officer may take samples not exceeding four ounces in the whole out of each pot, paying for the same (if demanded) one halfpenny for each ounce; And

If any person shall obstruct the officer in taking samples, he shall forfeit 50l. 17 G. 3. c. 39. s. 34.

Every maker (within the bills, shall monthly, (and elsewhere once in six weeks,) make entry in writing at the next excise office of the quantities of the materials used in each making on pain of 20l., which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. 19 G. 2. c. 12. s. 13.

Entry of glass made.

But no maker shall be obliged to go further than the market town where it is made, or the next market town for making such entries. s. 14.

The maker, within the bills, shall in four weeks and elsewhere in six weeks after entry pay off the duties, on pain of double duty (O.) s. 15.

Payment of the duty.

If any pot filled with materials shall crack or break, whereby the whole or any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. s. 11.

Allowance for glass spoiled in making, and for waste.

And in recompense of waste necessarily happening in manufacturing the materials, and for metal left at the bottom of the pot which cannot conveniently be wrought out, in all pots containing more than one hundred weight, used for preparing materials for making of *flint, enamel, stained glass*, and of all *phial glass*, an allowance shall be made to the maker of one-fourth part of the materials contained therein, and of one inch deep at the bottom of the pot;—in small pots, commonly called *Pile ends*, not containing one hundred weight, an allowance shall be made of one fifth only of the materials;—in pots used for the making of *crown and plate glass*, and of all *window glass*, whether *flashed* or *spread*, or otherwise manufactured, an allowance shall be made of one-fourth of the materials, and of four inches deep at the bottom.

If the maker shall be desirous to work up any of the bottoms for which an allowance hath been made of three inches or of four inches at the bottom as aforesaid, he shall give six hours' notice thereof in writing to the officer of excise; in which case he shall be charged with a duty for the same of 18s. 8d. per cwt., and shall have an allowance of one inch and no more at the bottom of the pot. And if he shall work any part thereof without having given such notice, he shall forfeit 50l. 17 G. 3. c. 39. s. 31, 2.

Working up bottoms.

Every maker of any *plate, flint, enamel, stained, or paste glass*: or of *spread window glass*, commonly called *broad glass*; or of *window glass* (not being *spread glass*) whether *flashed* or otherwise manufactured, commonly called *crown glass*, or *German sheet glass*, or of *common bottles* and vessels used in chemical laboratories; or of *garden glasses*, or any other

An account to be kept of waste of materials for making glass.

other vessel made of common bottle metal, shall from 1st July 1787 until 1st January 1788 keep an exact account of the real waste of all materials, metal, or other preparations which shall be incurred in the making of any of the sorts of glass aforesaid; and shall within six weeks of 1st January 1788 transmit a copy thereof to the commissioner of excise, which account shall be verified on oath by such maker or his chief workman, before one of the said commissioners, or the collector or supervisor of the district. 27 G. 3. c. 28. s. 12.

Regulations in
the making of
flint glass.

By 32 G. 3. c. 40. After 5th July 1792 every maker of *flint* glass, who shall have given notice for beginning to fill any pot with metal or materials for making of flint glass in manner required by law, shall be allowed three hours next after the time specified in such notice before he shall be required to begin to fill such pot, notwithstanding any thing in any former act to the contrary. s. 1.

Every *such* maker shall within six hours next after the time he shall begin to fill such pot put into the same one-fourth part at least of the true weight of the metal or preparation specified in such notice as being to be made use of in the making of flint glass; on the penalty of 50l. s. 2.

No *such* maker shall unstop or take down any stopper from his pot, containing any metal or preparation for the making of flint glass, unless one hour's previous notice in writing be given to the officer of excise of the time at which he intends to begin; on pain of forfeiting 50l. s. 3.

And if he shall not begin in pursuance of such notice, the same shall be void, and he shall be obliged to give a new notice in manner aforesaid, under the like penalty. s. 4.

Provided that this shall not extend to unstopping or taking down any stopper from any such pot, which may happen to crack or break while filled with any metal or preparation, for the sole purpose of preventing the loss thereof; or from any other pot for the sole purpose of discovering such broken pot; nor to subject any such maker to the said penalty of 50l. for unstopping or taking down any stopper from any pot during the time of the filling thereof, and within 36 hours from the time of his having begun to fill such pot. s. 5, 6.

Every *such* maker (on his giving to the officer six hours' previous notice in writing of his intention) may glaze any new pot previously gaged and taken an account of by the proper officer, and specified in such notice, and for that purpose may take out of any other pot any quantity of metal on which the duty has been charged, not exceeding 40lbs. in the whole, and put such metal immediately in the presence of such officer into such new pot, for the sole purpose

purpose of glazing the same, without such maker being able to any further duty in respect of such metal, or incurring any penalty by reason thereof. *f. 7.*

And every such maker, on his giving six hours' notice in writing in manner aforesaid, may cleanse any pot in which any stained glass hath been melted and specified in such notice, by taking any quantity of unstained metal on which the duty has been charged, not exceeding ten pounds in the whole, and by lading and unlading the same in the presence of such officer into and from such pot for that purpose, and repeating such operations in the presence of such officer, until such pot shall be sufficiently cleansed, without incurring any penalty. *f. 8.*

51 G. 3. c. 69. And every maker of flint glass or of phial glass, before he shall use any hear for the annealing thereof, shall, besides the licence for his glasshouse, take out such licence hereafter mentioned, as the case may require, authorizing him to use such hear for the annealing of flint and phial glass, or either. Any such licence shall be granted to authorize the person to whom the same shall be granted to use any such hear for the annealing of flint and phial glass, or either, within the limits of the chief office of excise in *London*, it shall be under the hands and seals of two of the commissioners of excise in *England* for the time being, or of such persons as they shall appoint for that purpose; but if out of the limits of the said chief office, the same shall be granted under the hands and seals of the collectors and supervisors of excise within their respective collections and districts, if such licence shall be granted, the same first paying 25l. for each such licence which shall be granted previous to *October 10th, 1811*, to authorize the person to whom the same shall be granted to use any hear for the annealing of flint and phial glass, or either, until the said *October 10th*; and 100l. for each such licence which shall be granted to authorize the person to whom the same shall be granted to use any hear for the annealing of flint and phial glass, or either, after the said 10th day of *October*: provided always, that it shall be lawful to include in any one licence any number of such hears belonging to the same person who shall take out any such licence, and such person paying for each such hear the sum of 25l., or 100l., as the case may require, for every such hear included in any such licence. *f. 6.*

Glass makers to take out a licence for each hear.

Nothing in this act shall extend to prevent any maker of flint or phial glass from using a hear, in respect of which no licence has been taken out, for the purpose of annealing flint glass of the sort which is made for cutting; provided such hear be immediately contiguous to a hear in respect of which a licence

A hear may be used though not licensed if placed near a licensed one, and in view of the officer.

a licence has been taken out, and the entrance of which shall be in the full view of any officer of excise, who shall at the same time observe and inspect the entrance of such contiguous lea, in respect of which a licence shall have been taken out, and the discharge hole of which shall be in the weighing room hereinafter mentioned, and not more than 12 feet from the discharge hole of such contiguous lea, in respect of which a licence shall have been taken out. *f. 7.*

Licences to be renewed yearly.

No person shall use any lea for the annealing of flint and phial glass, or either, after the expiration of such licence, unless such person shall take out a fresh licence for the like purpose as hereinbefore directed, 10 days at the least before the expiration of such former licence, and so renew every such licence from year to year; and if any person shall presume to use any lea for the annealing of flint and phial glass, or either, without first taking out a licence, and renewing the same as hereinbefore directed, he shall, for each such lea used without such licence, forfeit 50*l.* *f. 8.*

Penalty 50*l.*

Licences to remain in force till the 10th October, after granted.

Every licence to be granted under this act, shall remain until and upon the 10th day of *October* next ensuing the granting thereof. *f. 10.*

Officers of excise to number and mark pot-holes, workhouses, &c. for making or keeping flint or phial glass, or for keeping any material for making any such sort of glass.

Every officer of excise, from time to time and at all times, shall mark and number every workhouse, pot-chamber, pot-hole, lea, warehouse, room, and other place whatsoever, entered or used by any maker of flint or of phial glass, for the making or keeping of flint or phial glass, or for the preparing or keeping any material or preparation for the making of flint or phial glass; and if any person whatsoever shall hinder any such officer in so marking or numbering, or shall wilfully alter, deface, or obliterate any such mark, or cause or procure any such mark to be defaced or obliterated, or shall connive thereat, the person so offending shall, for each offence, forfeit 100*l.* *f. 11.*

Penalty on defacing marks, 100*l.*

Flint and phial glass makers to construct their leas in a particular form.

Every maker of flint or of phial glass shall erect, build, make, and construct, every lea by him intended to be used for the annealing of flint or of phial glass, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same respectively, and only one discharge hole out of the same, and which said discharge hole shall open into and communicate with the weighing room hereinafter mentioned, and no other room or place whatsoever; and every such maker shall number all such leas progressively with a durable mark, and shall continue the same so numbered so long as the same shall be so used as aforesaid; and if any such maker shall erect or construct any lea contrary to this act, or shall neglect or refuse

Penalty 100*l.*

He to so number the same, or so to keep or continue the same, or shall use any hear not so constructed, every such maker shall, for each such offence, forfeit 100l. */.* 12.

Every such maker shall at his own expence, find, provide, and affix a sufficient and secure iron grating to the mouth or entrance of every hear by him intended to be used for the annealing of flint or phial glasfs; and each such hear, and the mouth or entrance and iron grating thereof, shall be securely locked, fastened, and sealed by the officer of excise, at all times except when such maker shall be actually at work in placing or depositing therein articles, vessels, or utensils, of flint glasf or of phial glasf for the annealing the same therein, or when such hear shall be opened by the proper officer in pursuance of such previous notice as is hereinafter directed for opening the same, for the purpose of lighting fire in or heating the same for annealing articles of flint or phial glasf, or for the purpose of taking any such articles from such hear, or for the necessarily repairing the same; and if he shall neglect so to find any such iron grating, or to affix the same, he shall, for each such offence, forfeit 100l. */.* 13.

Every such maker shall place in one or more such hear or hears as aforesaid, for the annealing the same, and shall anneal therein all the flint and phial glasfs which shall be by him manufactured; and if any such maker shall omit so to anneal any portion of such glasfs by him manufactured, or shall place in any kiln, stove, or oven, or annealing arch or oven, other than such hear as aforesaid, any such glasfs for the annealing the same, or shall anneal the same therein, he shall, for each such offence, forfeit 200l. */.* 14.

No such maker shall at one time put or keep in any hear stored or used for the annealing of flint or phial glasfs, any articles, vessels, or utensils of different makings, nor any sort of glasfs or glasf wares, other than flint or phial glasf wares, on pain of forfeiting for each such offence 100l. */.* 15.

When any such maker shall intend to prepare, light, or kindle any fire to heat his hear, into which any flint or phial glasf is intended to be put for the annealing the same, such maker shall give to the officer of excise under whose survey he shall then be, six hours notice in writing of such his intention, and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such hear, and the mouth or entrance and iron grating thereof; and if any such maker shall neglect or refuse to light or kindle such fire within one hour after such hear, and the mouth or entrance and iron grating thereof, shall be opened by such officer, then such notice shall be void, and such officer shall again, immediately after the expiration of such one hour, lock up, fasten, and seal such hear, and the mouth

Flint or phial glasf maker to affix iron grating to the entrance of the hear, and the hear, to be locked by the officer of excise, when wares are depositing therein.

Penalty 100l.

Flint or phial glasf maker to anneal all his flint, or phial glasfs in such hear.

Penalty 200l.

No flint or phial glasf maker to have in his hear any other species of glasfs with phial glasfs.

Penalty 100l.

Flint and phial glasf makers to give notice of heating their hears.

mouth or entrance and iron grating thereof, as aforesaid and such maker shall give the like and a fresh notice in writing to such officer, before such lear, or the mouth or entrance or iron grating thereof, shall be again opened. *f. 16.*

Officers to lock up and seal the mouth of every flint glass lear as soon as the journey is finished, if finished by Saturday evening, and if not, then, to lock up and seal it at that hour, till a notice given for lighting the fire, not earlier than eight on the following Sunday evening.

Penalty 200l.

The officer of excise, under whose survey any glasshouse for the making of flint or phial glass shall be, shall, so soon as any journey of flint or phial glass making shall be finished, the same shall be finished at or before six of the clock in the evening of *Saturday* in any week, and if it shall not be finished at or before six of the clock in the evening of *Saturday* in any week, then at six of the clock in the evening of such *Saturday*, to lock, seal, fasten, and secure, every lear belonging to such glasshouse, and the mouth or entrance and iron grating thereof, and to keep the same locked, sealed, fastened, and secured, from thenceforth until such maker shall give to such officer such notice as is hereinbefore directed of such maker's intention to prepare or kindle a fire aforesaid to heat such lear, and in no case sooner than the hour of eight in the evening of the *Sunday* next following such locking, sealing, fastening, and securing of such lear, and if any person shall obstruct any such officer, or any person by him employed in that behalf, in so locking, &c. such lear or the mouth, &c. thereof, as such officer shall think expedient to answer the purpose by this act in that behalf intended, or shall attempt or endeavour so to do, or shall by any art whatsoever open any such lear, or the mouth, &c. thereof after the same shall have been locked, &c., as aforesaid, before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, seal, or fastening, then the person so offending shall, for each such offence, forfeit 200l. *f. 17.*

Flint and phial glass makers to provide a weighing room, which is to be kept locked by the officer.

Every such maker shall, at his own expence, find and provide, or construct, a good, sufficient, and secure weighing room in each flint or phial glasshouse to him belonging, which room shall be near to, and communicate with, the le of such glasshouse; and save and excepting the discharging hole of the said lear, no such room shall have more than one door or entrance into the same, and the said door or entrance shall open directly into, and form an immediate communication with, the re-weighing room hereinafter required, and no discharging hole of any such lear shall open into any place other than such weighing-room; and such weighing room and the entrance thereof shall be securely fastened and sealed by the officer under whose survey such maker shall be at all times when there shall be any flint or phial glass therein, or in the lear communicating therewith, except when the same shall be opened by such officer for the purpose of weighing and taking an account of the articles respectively of flint

phial glass therein, and charging the duty thereon, in pursuance of such notice as is hereinafter mentioned, or for the purpose of such maker or his servants arranging the positions of the pans or trays of articles hereinafter mentioned, which shall have been drawn, rolled, conveyed, or conducted, through the lears communicating with the said weighing-room into the said weighing room; and when any such maker shall be desirous of having the entrance of any such weighing room unlocked or opened for the purpose last aforesaid, such maker shall give to the officer of excise under whose survey he shall be, one hour's previous notice in writing of such his desire, and specifying in such notice the particular weighing-room which he is so desirous to have so unlocked or opened, and the particular time and hour when he desires to have the same so unlocked or opened, whereupon such officer shall attend pursuant to such notice, and shall unlock and open the said entrance, and shall so keep and continue the same for half an hour, during which time such maker, or one of his servants, shall be at liberty to arrange the positions of the said pans or trays in the said weighing-room, under the inspection of the said officer; and when the arrangement shall be finished, or at the end of the said half an hour (whichever of them shall first happen), such officer shall again secure the said entrance; and if any such maker shall neglect to find and provide or construct such weighing-room in any such glasshouse to him belonging, shall, for each such offence, forfeit 200l.: Provided that no such maker shall give any such notice as last aforesaid for having the entrance of any weighing-room opened more than once within any 12 hours, nor shall any officer, in pursuance of any such notice, open any such entrance more than once within any 12 hours. *§ 18.*

Penalty 200l.

And every such maker shall also, at his own expence, construct a proper number of iron pans or trays to receive, during the annealing thereof in the lear of each flint or phial glasshouse to him belonging, all the articles of flint or of phial glass which shall be made or blown in such glasshouse, and shall also find and apply to such iron pans or trays good and sufficient chains, rollers, instruments, apparatus, and machinery, proper for working the said iron pans or trays, and conveying the same with such articles of flint or phial glass therein or thereon, immediately from the mouth of such lear into the said lear for the annealing the same therein, and shall also, at his own expence, find and erect in the most convenient part of every such glasshouse, a fit windlass for the drawing, rolling, conveying, and conducting, every such pan or tray with the said articles, from the mouth of the said lear into the said lear, and also for drawing, &c. every such pan or tray with the said articles therein or thereon through the said

Flint and phial glass makers to provide annealing pans or trays, with a windlass and machinery for carrying them, with the glass wares therein, through the lear, into the weighing-room.

Penalty 200l.

faid lear, and for drawing, &c. the faid pans or trays with the faid articles from out of the faid lear into the faid weighing room, when fuch articles fhall have been fufficiently annealed in the faid lear, that the officer of excife, under whose furvey fuch maker fhall be, may weigh and take an account of fuch articles in the faid weighing-room and charge the duty; and if any fuch maker fhall neglect fo to make a proper number of iron pans or trays to contain and convey into and out of fuch lear for the purpose of annealing, or to find or apply to fuch iron pans or trays, or any of them, fuch fufficient chains, rollers, instruments, apparatus, and machinery, fit for working the faid iron pans or trays, or any of them, for any of the purposes in that behalf aforefaid, or fhall neglect to find or erect any fuch fit windlafs as is in that behalf aforefaid, every fuch maker fo offending fhall, for each fuch offence, forfeit 200l. *s. 19.*

Flint glafs makers to deposit the wares on the trays, and when filled, to convey them into the lear, and from thence into the weighing-room.

Every fuch maker fhall, fo foon as any article of flint or phial glafs fhall be made or blown, deposit the fame on or in one of fuch pans or trays which fhall at that time be placed within the mouth or entrance of the lear for the purpose of receiving the articles fo made or blown, and fhall fo continue to deposit on or in the faid pan or tray fo placed as aforefaid, fuch articles, until the bottom or furface of the faid pan or tray fhall be filled or covered, and fhall continue all fuch articles refpectively on or in fuch pan or tray, until the faid articles fhall be conveyed or conducted on or in fuch pan or tray into the lear of the faid glafhous as hereinafter mentioned; and fo foon as the bottom or furface of fuch pan or tray fhall be filled or covered by fuch articles, fuch maker fhall, by means of fuch chains, rollers, instruments, windlafs, and machinery as aforefaid, convey and conduct the fame, with the whole of the faid articles, into the faid lear, for the annealing the faid articles therein; and fuch maker fhall continue each fuch pan or tray with the faid articles therein in fuch lear, until the faid articles fhall be fufficiently annealed; and when the fame fhall be fo annealed, fhall in like manner convey and conduct the faid pan or tray with the faid articles from out of fuch lear directly unto and into the faid weighing-room, and fhall, without altering or difturbing the pofitions of fuch articles or any of them, on or in fuch pan or tray, continue the fame in the faid weighing-room, until the officer under whose furvey fuch maker fhall then be fhall have taken an account of and weighed the faid articles refpectively, and charged the duty in refpect thereof refpectively; and if any maker fhall neglect or refuse to put away, or deposit, any article of flint or of phial glafs on or in one of fuch pans or trays fo placed as aforefaid, when and fo foon as fuch article fhall be blown or made, or fhall neglect

Penalty 200l.

or refuse to proceed, or so to continue to deposit on or in the said pan or tray so placed as aforesaid such articles as aforesaid, until the bottom or surface of the said pan or tray shall be filled or covered, or shall neglect or refuse to continue any such articles on or in such pan or tray as aforesaid, or shall neglect or refuse so to convey or conduct any such pan or tray, with the whole of the said articles, into the said lear, for the purpose of annealing the said articles; or if any such maker shall neglect or refuse to continue any such pan or tray with the said articles in any such lear, until the said articles shall be so annealed, or shall neglect or refuse so to convey or conduct in manner in that behalf aforesaid, any such pan or tray with such articles as in that behalf aforesaid, therein or thereon, out of such lear directly unto and into the said weighing-room, or shall neglect or refuse to continue any such articles in that behalf aforesaid, without altering the positions thereof, or the position of any of them, in any such pan or tray as in that behalf aforesaid, or to continue the same in the said weighing-room until the officer under whose survey such maker shall then be, shall have taken an account of and weighed the said articles, and charged the duty, every such maker shall, for each such offence, forfeit 20*l*. *s. 20.*

Every such maker shall, so soon as any journey or making of flint or phial glass shall be finished, and before the mouth, entrance, or iron grating of the lear into which the articles of that journey or making shall have been put, shall be locked, fastened, or secured, by the proper officer, deliver to the proper officer a declaration in writing, specifying the true number of such iron pans or trays as aforesaid, into or on which such articles be of that particular journey or making shall have been put, and which shall have been so filled with such articles, and put or deposited in each such lear; and if any such maker shall neglect to deliver such declaration in writing, such maker shall, for each such offence, forfeit 10*l*. *s. 21.*

Every such maker shall keep sufficient and just scales and weights at the place where he shall make any flint or phial glass, and shall, at his own expence, find and affix within his weighing-room and re-weighing-room respectively, fit and proper hooks or staples, and also permit any officer to use the same for the purpose of weighing and taking an account of and re-weighing the flint and phial glass respectively, which shall at any time be in the possession of such maker; and if any such maker shall neglect to keep such scales and weights, or either of them, or shall not at his own expence find and affix such fit and proper hooks or staples as aforesaid, or shall not permit any officer of excise to use the same, such maker shall, for each such offence, forfeit 10*l*. *s. 22.*

Flint and phial glass makers to give the officer a declaration of the number of pans filled with glass, of that journey.

Penalty 10*l*.

Flint and phial glass makers to provide scales and weights at the glass house.

Penalty 10*l*.

Making use of
false scales, 500l.

shall, for each such offence, forfeit 100l.; and if any such maker shall, in the weighing or re-weighing of any flint or phial glass, make use of any false or insufficient scales or weights, or shall practise any art by which any such office may be hindered from taking the just weight of any such flint or phial glass, in every such case such maker shall, for each such offence, forfeit 500l., with all such false or insufficient scales and weights respectively, and the same shall be seized by any officer of excise. *s. 22.*

Flint and phial
glass makers to
give six hours
notice for having
the weighing
rooms opened.

Every such maker being desirous to have any weighing room to him belonging unlocked and opened, for the purpose of weighing and charging with the duty any flint or phial glass therein, shall give to the officer under whose survey he shall then be, six hours previous notice in writing of his desire, and specifying in such notice each particular weighing room which he desires to have so unlocked or opened, and the particular time and hour at which he desires to have the same so unlocked or opened; and upon such notice such officer shall attend at the time mentioned in such notice, and shall unlock and open such weighing-room, and such officer shall proceed to weigh the whole of the flint and phial glass respectively (whether whole or broken) with such scales and weights as aforesaid in the said weighing-room, and shall charge such maker with the duty, according to such weight. Provided always, that no such maker shall be at liberty to give any such notice for having any such weighing-room, or the door or entrance thereof opened for the purposes aforesaid, at any other time than between the hours of six in the morning and six in the afternoon. *s. 23.*

Notice void for
opening any
weighing-room
at any other
time than be-
tween certain
hours.

Warrant to
search for glass
fraudulently
conveyed away.

If any officer of excise shall have cause to suspect that any flint or phial glass which shall have been fraudulently removed away before the same shall have been weighed by the proper officer, according to the directions of this act, shall be deposited or concealed in any place whatsoever, then, if such place be within the cities of *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners of excise in *England* for the time being, or any two or more of them, or in case such place shall be in any other part of *Great Britain*, upon oath made by such officer before one or more justices for the county, riding, division, or place, where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or any two or more of them, or the justice of the peace before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant under his and their respective hands and seals, to authorize such officer by day or by night, but in the night; then in the presence of a constable or other law-
ful

ful officer of the peace, to enter into every such place where he shall so suspect such flint or phial glass to be deposited or concealed, and to seize and carry away all such flint and phial glass which he shall then and there find so deposited or concealed, as forfeited; and if any person whatsoever shall let or hinder any such officer so authorized, or any other person acting in his aid, in the execution of such warrant, from entering any such place where such officer shall so suspect such flint or phial glass to be so deposited or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person so offending shall, for each such offence, forfeit 200*l.* *f. 24.*

Penalty 200*l.* on persons obstructing the execution of the search warrant.

All enamel, stained or paste glass, which shall be made in Great Britain, shall be taken to be flint glass, within this act. *f. 25.*

Enamel and stained or paste glass to be deemed flint glass.

And in every such weighing of any such flint or phial glass, the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker one pound weight upon each one hundred pounds of such flint or phial glass so weighed. *f. 26.*

In weighing turn of the scale to be given in favour of the crown.

And every such maker shall, at his own expence, find and construct a good and secure re-weighing-room, adjoining to each flint or phial glasshouse, as the case may require, to him belonging, which room shall be contiguous and next adjoining to the said weighing-room, and shall be separated therefrom only by a wall not more than two feet in thickness, and the door of communication shall be in such wall between the said weighing-room and re-weighing-room; and no such re-weighing-room shall have more than two doors or entrances into the same, one thereof being the said door of communication between the said weighing-room and re-weighing-room, and the other thereof opening into or communicating with any part of the premises appertaining to the glass-house to which such re-weighing-room may belong; and each such re-weighing-room, and the doors or entrances thereof, shall be securely locked, fastened, and sealed, by the officer under whose survey such maker respectively shall be, whenever any glass which shall have been weighed and charged by such officer shall be placed or deposited therein, for the space of six hours after the same shall have been weighed, unless the same shall have been sooner re-weighed by the surveyor or supervisor of excise, according to the directions of this act; and so soon as any flint or phial glass shall be weighed by the proper officer, the maker thereof shall, with a sufficient number of his workmen, without delay or interruption and with all due diligence, remove and convey the same, and every part thereof, out of the said weighing-room into the said re-weighing-room, and shall there place the same in the said re-weighing-room separate from all other glass or glass wares whatsoever,

Glass makers to provide a re-weighing-room, for depositing the flint glass weighed and charged by the officer, for a certain time, unless re-weighed in the interim by the supervisor.

and such flint or phial glass respectively shall remain in such re-weighing-room where so placed for full six hours after the same shall have been so weighed, unless the same shall have been sooner re-weighed by the respective surveyors or supervisors of excise, to the end that the said surveyors or supervisors respectively may have an opportunity to weigh or re-weigh the same; and the said respective surveyors or supervisors are to weigh or re-weigh all such flint and phial glass respectively accordingly; and if upon the re-weighing thereof any additional weight shall be discovered or found, such additional weight shall be charged with the duties payable for such flint or phial glass; and if any such flint or phial glass so removed and conveyed into any such re-weighing-room shall not be re-weighed by any surveyor or supervisor within the said six hours, then the officer, under whose survey such maker shall then be, shall lock, seal, and fasten the said weighing-room and the said door of communication between the same and the said re-weighing-room, and shall unlock and open the said other door or entrance into the said re-weighing-room; and if any such maker shall neglect to find or construct such re-weighing-room as aforesaid, or shall neglect, when any flint or phial glass shall be weighed by the proper officer, with a sufficient number of his workmen, to remove any such flint or phial glass without delay and with all due diligence from the said weighing-room into the said re-weighing-room, or shall neglect to place the same or any part thereof in the said re-weighing-room as aforesaid, separate from all other glass whatsoever, or shall remove or suffer to be removed from such re-weighing-room, any flint or phial glass before the end of six hours next after the same shall have been so weighed by the proper officer, unless the same shall have been sooner weighed or re-weighed by the respective surveyors or supervisors, the person so offending shall, for each such offence, forfeit 200l.: Provided that no iron grating, weighing-room, or re-weighing-room, shall be deemed to be a sufficient or secure iron grating, &c. unless the same shall be approved of by the respective surveyors or supervisors of the district within which the hearth to the mouth or entrance of which such iron grating shall belong, or for which the same is intended shall be situate, or within which such weighing-room or re-weighing-room shall be situate. / 27.

No iron grating, weighing-room, or re-weighing-room to be deemed sufficient unless approved of by the supervisor of excise.

Supervisors to provide locks and fastenings at the glass maker's expence.

Penalty for neglect, &c. 200l.

Proper locks, keys, and all other necessary fastenings, for securing and sealing every such hearth, and the mouth or entrance and iron grating thereof, and for securing and sealing every such weighing room and re-weighing-room, and the door or entrance thereof, shall be provided by the respective surveyors and supervisors of such district, at the expence of such maker; and if any such maker shall neglect to pay for any lock, key,

key, or other necessary fastening, which shall be provided by any surveyor or supervisor, or if any person shall obstruct any officer, or any person by him employed in that behalf, in the fixing or placing any such fastening in such manner as such officer shall direct or think expedient, or in the locking, sealing, or securing any such lear, or the mouth or entrance or iron grating thereof, or in the locking, sealing, or securing any such weighing-room or re-weighing-room, or the door or entrance of the same, or any such fastening as aforesaid, or by any means whatsoever shall open any such lock or lear, or the mouth, entrance or iron grating thereof, or any such weighing-room or re-weighing-room, or the door or entrance of the same, or shall clandestinely gain admittance or make any hole or opening into any such lear, after the same or the mouth or entrance or iron grating thereof shall have been locked, sealed, fastened, or secured as aforesaid, or into any such weighing-room or re-weighing-room after the same or the door or entrance of the same respectively shall have been locked, sealed, fastened, or secured as aforesaid, before the same respectively shall have been unlocked and opened by the proper officer of excise, or shall wilfully break or damage any such door, lock, seal, iron grating or fastening, every such maker or other person so offending shall, for each such offence, forfeit 200l. /s. 28.

Where any locks, keys, or fastenings, shall be provided in pursuance of this act, every maker to whom such locks, &c. shall then belong, shall at his own expence at all times when required so to do by the respective surveyors or supervisors of the division in which such his glasshouse shall be situate, immediately set about altering, repairing, and amending, and shall also within a reasonable time then next following, alter, repair, and amend the same respectively, according to such requisition; and if any such maker to whom any such locks, &c. or any of them shall belong, shall neglect immediately to set about altering, &c. or to alter, &c. the same when thereunto required according to this act, he shall, for each such neglect, forfeit 100l. /s. 29.

Every maker of flint or of phial glasf shall, so often as he shall be thereunto required by the officer under whose survey he shall then be, with a sufficient number of his workmen, assist to the utmost of his power such officer, &c. in weighing and taking an account or in re-weighing all flint or phial glasfs of such maker, on pain of forfeiting, for every neglect, 100l. /s. 30.

Every maker of flint or of phial glasf shall keep all flint and phial glasf respectively in his possession, and which shall not have been weighed by the officer according to this act, separate from all flint and phial glasfs which shall have been weighed,

Locks and fastenings to be altered and kept in repair by the flint and phial glasf makers.

Penalty 100l.

Flint and phial glasf makers to assist officers in weighing and re-weighing.

Penalty 100l.

Unweighed flint and phial glasfs to be kept apart from all weighed flint glasfs.

Penalty 100l.

Flint glass makers conveying away flint or phial glass before weighed.

Penalty 500l.

Flint and phial glass makers not to use any but an entered lear.

Penalty 200l.

Flint or phial glass makers to work the metal out of their flint pots by six on the Saturday evening in each week,
Penalty 200l.
Maker not to incur the penalty for not working out of the allowance of an inch at the bottom of any flint pot.

Makers to charge their pots with fresh materials at six in the evening of Saturday, in presence of the officer.

Penalty 200l.

But penalty not incurred if the metal be laded out from the

weighed, and from all other glass wares whatsoever, on pain of forfeiting 100l. *§. 31.*

If any maker of flint or phial glass shall fraudulently remove away any flint or phial glass from any place before the proper officer shall have weighed the same, or shall neglect to produce any such glass to such officer that he may weigh the same, he shall for each such offence forfeit 500l. together with all such glass; and the same may be seized by any officer of excise. *§. 32.*

If any such maker shall for the annealing of any flint or phial glass use any private or concealed lear, annealing arch, oven, utensil, or place whatsoever, other than his known lear entered for that purpose, or shall practise any art for answering the purpose of a lear or annealing arch or oven, for the purpose of annealing any flint or phial glass, or if any such maker shall use any art other than an entered lear, to answer the purpose of a lear, for the annealing of any flint or phial glass, each such maker shall, for each such offence, forfeit 200l.

§. 33.

Every such maker shall, at or before six in the evening of *Saturday* in each week, work out into wares the whole of the metal or preparation which shall at any time during that week have been founded or melted in any pots to him belonging for the making of flint or phial glass, on pain for every neglect of 200l.: Provided always that nothing hereinbefore contained shall extend to subject any such maker to the said last-mentioned penalty by reason of his not working out the allowance of one inch deep made to such maker by 17 *G. 3. c. 39.*

Every such maker shall so soon as any journey shall be finished, if the same shall be finished at six in the evening of *Saturday* in any week, or if the same shall not be finished at such hour, then every such maker shall at such hour, in the presence of the officer under whose survey such maker shall then be again charged, each pot from out of which any glass wares shall have been worked in such journey with fresh materials or preparations (other than cullet or broken glass) not less than 50lbs. weight; and if any such maker shall not in the presence of such officer, so soon as any journey shall be finished, if the same shall be finished before six in the evening of *Saturday* in any week, or if the same shall not be finished at or before such hour, then if such maker shall not at such hour, in the presence of such officer, again charge each such pot with fresh materials or preparations as aforesaid, the person so offending shall, for each such offence, forfeit 200l.: Provided that nothing hereinbefore contained shall extend to subject any such maker to the said last-mentioned or any other penalty by reason of his not charging with such

such fresh materials or preparations as aforesaid any such pot from out of which such maker shall, in the presence of such officer, and under a previous notice in writing given by such maker to such officer by the space of two hours, have laded out into water the whole of the metal remaining in any such pots at the time of such lading as aforesaid. *f. 35.*

No such maker shall make within the same building by him entered or used for the making of flint or phial glass, or in any building adjoining thereto, any sort of glass or glass wares whatever other than flint and phial glass, on pain for each such offence of 100*l.* *f. 36.*

No maker of glass shall make of common bottle metal any bottle or bottles smaller or of less size or content than what is commonly deemed an half-pint bottle; nor shall make of common bottle metal any bottle smaller or of less size or content than aforesaid, on pain of forfeiting for each such offence 50*l.* *f. 37.*

If any person shall obstruct or hinder any officer in the execution of this or any other act relating to flint or phial glass, he shall for each such offence (other than those for which any penalty is hereinbefore specially imposed or provided) forfeit 30*l.*: Provided that nothing in this act contained shall extend to make it unlawful for any officer from time to time to inspect, examine, gauge, or otherwise to take an account of, the metal and materials mixed and prepared or founded or founding for the making of glass in any such glasshouse or building as aforesaid, as well before such metal or materials shall be put into any pot as after the same shall be put into any pot, or to take a sample not exceeding eight ounces in the whole out of each such pot or any other vessel containing such preparation for making glass. *f. 38.*

In addition to the penalty imposed by 17 *G. 3. c. 39. f. 37.* of 100*l.* as in that sect. mentioned, all such broken and waste glass shall be forfeited, and shall be seized by any officer of excise. *f. 41.*

And be it further enacted, That all fines, penalties, and forfeitures by this act imposed, shall be sued for, recovered, levied, or mitigated, by such ways as any fine, &c. may be sued for, &c. by any laws of excise, or by action, &c. &c.; one moiety of every such fine, &c. to his majesty, the other moiety to him who shall discover or sue for the same. *f. 42.*

And be it further enacted, That all the powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisos, clauses, matters, and things, which in and by any act or acts of parliament relating to the duties on glass, or on the materials or metal, or other preparation made use of in *Great Britain* in the making of glass, or to the paying or allowing of any drawback on the exportation of glass,

pot into water in the presence of officer.

No flint or phial glass maker to manufacture any other sort of glass in his flint glasshouse, &c. on penalty of 100*l.*

Glass makers not to make of common bottle metal any bottle less than a reputed half pint. Penalty 50*l.*

Penalty on obstructing officers 30*l.*

Forfeiture of broken glass case entered for exportation on drawback.

Penalties and forfeitures how to be levied.

Regulations and provisions of former acts to extend to this act.

in force immediately before the said first day of *August*, 1811, are contained, provided, settled, or established, for managing, assessing, raising, levying, collecting, recovering, adjudging, mitigating, ascertaining, enforcing, and securing the said duties, or for paying or allowing any drawback of the said duties, and for preventing, detecting, and punishing frauds relating thereto, except where the same are expressly repealed or altered by this act, shall be and remain in full force and effect, to all intents and purposes; and the said powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things, except as before excepted, shall continue and be duly observed, practised, applied, used, and put in execution, throughout the whole kingdom of *Great Britain*, as fully and effectually to all intents and purposes (except as before excepted) as if the said powers, authorities, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters and things, had been expressly inserted and re-enacted in this present act. *f. 43.*

49 G. 3. c. 63.
continued till
Aug. 1, 1812.

Spread window
and crown glass.
Directions for
the construction
of the annealing
arch or oven.

The 49 G. 3. c. 63. shall continue from the first day of *August* 1811, until the first day of *August* 1812; except as the provisions thereof are altered by this act. *f. 46.*

By the 49 G. 3. c. 63. *f. 5.* Every maker of spread window glass or of crown glass shall construct every annealing arch or oven by him intended to be used for the annealing of spread window glass or crown glass respectively in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same, and shall number the same progressively, with a durable mark, and if any such maker shall construct any annealing arch or oven contrary to this act, or shall neglect or refuse to number or mark the same according to this act, or shall make use of any annealing arch or oven not constructed in the manner before directed, every such maker shall for every such offence forfeit 100*l.*

Penalty for non-
compliance 100*l.*

Iron grating to
be affixed to
the entrance of
the annealing
arch, and fasten-
ings to be pro-
vided, &c.

By *f. 6.* Every such maker shall, at his own expence, provide and affix a good and sufficient iron grating to the mouth or entrance of every annealing arch or oven, by him intended to be used for the annealing of spread window glass or crown glass respectively, such iron grating to be approved of in writing under the hand of the respective surveyors or supervisors of the division or district within which it shall be situate, and proper locks and keys, and all other necessary fastenings for securing and sealing every such annealing arch and oven, and the mouth or entrance and iron grating thereof shall be provided by the respective surveyors and supervisors, at the expence of such maker; and when such maker shall or ought to have delivered the declaration of the number of tables contained in any such annealing

Maker to deliver
declaration of
the number of
tables deposited

arch

arch or oven, the proper officer shall immediately lock, fasten, and seal, every such annealing arch or oven, &c., and shall keep the same locked, &c. until the glass shall be taken out in the presence of the proper officer, for the purpose of being weighed and charged; and if any such maker shall neglect or refuse, at his own expence, to provide such iron rating, or to affix the same as herein directed, before such annealing arch or oven shall be made use of as aforesaid, or to pay for any lock, key, or other necessary fastening, which shall be provided by any surveyor or supervisor, according to this act, or if any person shall obstruct any officer, or any person by him employed in that behalf, in the fixing any such fastening, in such manner as such officer shall think expedient, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or entrance or iron rating thereof, or any such fastening as aforesaid, or by any means whatsoever shall open any such lock or annealing arch or oven, or the mouth, &c. thereof, after the same shall have been locked, &c. before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, &c. every such maker or other person so offending shall, for every such offence, forfeit 100*l*.

in the annealing arch, &c. penalty on neglect.

And by *s. 7*. Where any locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom such locks, &c. shall then belong, shall, at his own expence, at all times when required so to do by the respective surveyors or supervisors, immediately set about altering, repairing, and amending, and shall also, within a reasonable time then next following, alter, &c. the same respectively according to such requisition; and if any such maker, &c. to whom any such locks, &c. or any of them, shall belong, shall neglect or refuse immediately to set about the altering, &c. or to repair, &c. when thereunto required according to this act, he for each such offence shall forfeit 50*l*.

Locks and fastenings to be altered and kept in repair when required on penalty of 50*l*.

And by *s. 8*. When any such maker, &c. shall be desirous to prepare, light, or kindle any fire to heat his annealing arch or oven, into which any spread window glass or crown glass is intended to be put for annealing, such maker shall give to the officer under whose survey he then is, six hours notice in writing of his intention; and if any such maker shall neglect or refuse to prepare, &c. such fire within one hour after the time mentioned in such notice then such notice shall be void, and such maker shall give a fresh notice before he shall prepare, &c. a fire in any such annealing arch or oven; and if any such maker shall light a fire therein without such previous notice he shall, for every such offence, forfeit 50*l*.

Notice of heating the annealing arch to be given the excise officer, on penalty of 50*l*.

And by *s. 9*. Every maker, &c. shall, so soon as the same shall be made or flashed, remove all the spread window glass and

Regulations for putting the glass when flashed

into annealing
arch.

and crown glasf refpectively by him fo made or flafhed directly into fuch annealing arch or oven, and fhall there place the fame fo as the officer under whole furvey he fhall then be, fhall approve, and fo that the fame may, fo far as may be the moft eafily and fecurely infpected and examined, and the numbers and kinds thereof refpectively judged of in every fuch annealing arch or oven; and no fuch maker fhall at any time place or keep in any fuch annealing arch or oven any fpread window glasf and crown glasf; nor fhall any fuch maker place or keep any other fort of glasf whatever in any fuch annealing arch or oven entered or ufed for the annealing of fpread window glasf or crown glasf; and upon neglect or refufal to remove the fame, fo foon as the fame fhall be made or flafhed, directly into fuch annealing arch or oven or to place it as aforefaid; or if any fuch maker fhall at any time place or keep in any fuch annealing arch or oven any fpread window glasf and crown glasf, or any other fort of glasf whatever, in any annealing arch or oven entered or ufed for the annealing of fpread window glasf or crown glasf, he fhall for each fuch offence forfeit 100l.

Penalty 100l.

Before the annealing arch is clofed a declaration of the number of tables fhall be delivered, on penalty of 20l.

No maker of fpread window glasf or crown glasf to be liable to the penalty of 20l. impofed by 49 G. 3. c. 63. f. 10. if the number of tables in any annealing arch does not vary more than five per cent. from the number fpecified in the declaration.

By f. 10. Before any fuch maker fhall begin to clofe or ftop up any annealing arch or oven containing any fpread window glasf or crown glasf, he fhall deliver to the proper officer a declaration in writing fpecifying the true number of tables of fpread or crown glasf refpectively deposited and contained in every fuch annealing arch; and upon neglect or refufal fo to do he fhall forfeit 20l.

And whereas by 43 G. 3. c. 63. f. 10. it is enacted, that before any maker of fpread window glasf or crown glasf fhall begin to clofe or ftop up any annealing arch or oven containing any fpread window glasf or crown glasf, he fhall deliver to the proper officer a declaration in writing fpecifying the true number of tables of fpread glasf or crown glasf refpectively put and contained in each fuch annealing arch refpectively and if any fuch maker fhall neglect to deliver fuch declaration in writing as laft aforefaid he fhall, for each fuch offence forfeit 20l.: And whereas it may fometimes happen that from errors in counting and otherwife, the true number of fuch tables refpectively put or contained in any fuch annealing arch may be miftaken, after the firft day of *Auguft* 1811, no fuch maker fhall incur the faid penalty of 20l. by reafon of any declaration by him delivered as the declaration required by the faid recited claufe, not fpecifying the true number of tables fo put and contained in any fuch arch, provided that the number of tables refpectively fpecified in fuch declaration if delivered fhall not vary more than at and after the rate of five per centum from the true number of tables put or contained in fuch annealing arch.

By §. 11. Every such maker, &c. shall keep sufficient and set scales and weights at the place or places where he shall manufacture the same, and shall at his own expence provide and affix within such glasshouse, and within view of the annealing arches or ovens thereof, a proper hook or staple in a proper place to be approved of in writing under the hands of the respective surveyor or supervisor, and also permit any officer to use the same for the purpose of weighing and taking account of such glass as shall at any time be in the possession of such maker; and upon neglect to keep such scales and weights, and at his own expence to provide and affix such hook, &c. and upon not permitting or suffering any officer to use the same he shall, for every such offence, forfeit 100l.; and if any such maker shall, in the weighing of any such spread window glass or crown glass, use, or cause, or suffer to be used, any false, unjust, or insufficient scales or weights, or shall practise any contrivance by which any such officer may be hindered from taking the true weight thereof, in every such case he shall forfeit 500l. with all such false scales and weights respectively, and the same may be seized by any officer of excise.

Scales and weights to be provided at the glasshouse.

Penalty for neglect 100.

And by §. 12. Every such maker, being desirous to draw any spread window glass or crown glass from out of any annealing arch or oven to him belonging, shall, by the space of 2 hours next before the beginning to draw, give to the officer of excise a notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such glass, and the particular time and hour at which it is so intended to begin to draw; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall open such annealing arch and oven for the purpose aforesaid, and such officer shall attend to see the whole of such glass drawn, and such maker shall immediately on such officer's attendance begin to draw, and shall continue without any unnecessary delay to draw every part thereof; and such maker shall immediately, on such glass being so drawn, weigh the whole with such scales and weights as aforesaid, in the presence of such officer; and such maker shall be charged with and shall pay the duty for such glass according to such weight; and if any such maker, having given such notice and begun to draw as aforesaid, shall not so continue to draw and to weigh as hereinbefore directed, he shall for every such offence forfeit 100l.; and if any such maker shall neglect or refuse to begin to draw from his annealing arch or oven, immediately after such arch or oven, and the mouths or entrances and iron gratings thereof, shall be opened by such officer, then such notice shall be void, and such officer shall immediately lock up,

Notice to be given before any glass is drawn from the annealing arch, &c.

Penalty on neglect, &c.

fasten, and seal, each and every such arch or oven, and the mouth, &c. as aforesaid, and such maker shall give the like notice to such officer before any such annealing arch, &c. & shall be again open: Provided always, that no such maker shall be at liberty to give any such notice to draw except in the day-time, and that between six in the morning and six in the afternoon, and that every notice given for the drawing at any time other than in the day-time, and between the said hours, shall be void.

In weighing, the turn of the scale to be given in favour of the crown, &c.

Regulations for the weighing of glass, after it has been deposited, &c.

Penalty on makers making default 100l.

Makers to assist officers in weighing on penalty of 100l.

Penalty on conveying glass from the annealing arch before it is weighed 100l.

Glass to be kept apart till weighed.

Provided that in the weighing of any such glass the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker 1lb. weight upon every 100lb. of such glass so weighed. *f.* 13.

And by *f.* 14. So soon as any spread window glass or crown glass shall be weighed by the proper officer, the same shall be forthwith placed in a convenient place separate from all other glass or glass wares whatsoever, and shall remain where so placed for full six hours after being so weighed unless sooner weighed or re-weighed by the respective surveyors or supervisors, to the end that they may have an opportunity to weigh or re-weigh the same, and they are hereby empowered to weigh or re-weigh all such spread window glass and crown glass accordingly, and if upon the re-weighing any additional weight shall be discovered it shall be charged with the duties payable for such glass; and if any such maker shall refuse or neglect to place separate as aforesaid, or shall remove or convey, or cause or suffer to be removed or conveyed, from such place as aforesaid, any spread window glass or crown glass before the end of six hours next after such weighing as aforesaid, unless the same shall have been sooner weighed or re-weighed, he shall, for every such offence, forfeit 100l.

And by *f.* 15. Every such maker shall, so often as he shall be required by the officer of excise under whose survey he shall then be, with a sufficient number of his servants, assist to the utmost of his power such officer, or surveyor, or supervisor, in weighing and taking an account, or in re-weighing and taking an account of all such glass, on pain of forfeiting for every neglect or refusal, 100l.

By *f.* 16. If any such maker shall convey away any spread window glass or crown glass from any annealing arch or oven before the proper officer shall have weighed the same, or shall neglect or refuse to produce any such glass to such officer, that he may weigh according to this act, he shall for every such offence forfeit 100l.

By *f.* 17. Every such maker shall at all times keep spread window glass or crown glass in his custody, and which shall not have been weighed by the officer of excise

According to the directions of this act, separate from all spread window glafs and crown glafs refpectively, which fhall have been weighed, and from all other glafs wares whatfoever, upon pain of forfeiting 100l.

By *f. 18.* If any fuch maker fhall, for the annealing of any fuch glafs, ufe any private or concealed annealing arch, oven, tenfil, or place whatever, other than his known annealing arch entered for that purpofe, or if any fuch maker fhall fraudulently remove away any fpread window glafs or crown glafs before the fame fhall have been weighed by the proper officer, or fhall fraudulently hide any fuch glafs, every fuch maker fhall forfeit 100l.

Makers not to ufe any but an entered annealing arch, or removed glafs which has not been weighed, &c.
Penalty 100l.

By *f. 19.* If any maker of fpread glafs fhall manufacture within the fame glafshoufe or building, by him entered or ufed for the manufacturing of fpread window glafs, or in any glafshoufe or building adjoining thereto, any other fpecies of glafs or glafs wares, or if any maker of crown glafs fhall manufacture within the fame glafshoufe or building by him entered or ufed for the manufacturing of crown glafs, or in any glafshoufe or building adjoining thereto, any other fort of glafs or glafs wares except plate glafs as aforefaid, every fuch maker fhall, for every fuch offence, forfeit 50l.

Penalty 50l.

By *f. 20.* If any officer of excife fhall have caufe to fufpect that any fpread window glafs or crown glafs refpectively, fhall have been fraudulently conveyed away before the fame fhall have been weighed by the proper officer according to this act, and fhall be lodged in any place whatfoever, then fuch place fhall be within the cities of *London* or *Wefminfter*, or within the limits of the chief office of excife in *London*, upon oath made by fuch officer before any two of the commiffioners, or if elfewhere, before one juftice for the county, riding, divifion, or place, where fuch officer fhall fufpect the fame to be lodged or concealed, fetting forth the ground of his fufpicion, it fhall be lawful for them refpectively, as the cafe may require, before whom fuch oath fhall be made, if it be judged reasonable, by fpecial warrant, to empower fuch officer by day or by night, but if in the night time in the prefence of a conftable or other officer of the peace, to enter into every fuch place where he fhall fo fufpect fuch glafs to be depofited or concealed, and to feize and carry away all fuch glafs which he fhall then and there find fo depofited or concealed as forfeited; and if any perfon whatfoever fhall obftruct any fuch officer fo authorized or any other perfon acting in his aid in the execution of fuch warrant, from entering any fuch place where fuch officer fhall fo fufpect fuch glafs to be fo depofited or concealed, or in feizing or carrying away the fame or in the due execution of any

For recovering glafs fraudulently conveyed away.

Penalty on perfons obftructing the recovery, 100l.

any such warrant, the person shall, for every such offence, forfeit one hundred pounds.

Penalty on obstructing officers, 300l.

And by *f. 21.* If any person shall obstruct any officer excise in the execution of any of the powers to him given by this or any other act relating to glass, the person so offending therein shall, for every such offence, other than those for which any penalty is hereinbefore specially imposed, forfeit 300l. ; provided always, that nothing in this shall make it unlawful for any officer of excise, at all times to inspect, gauge, or otherwise to take an account of metal and materials mixed and prepared or founded for the making of glass in any such glasshouse or building as aforesaid, as well before such metal or materials shall be put into any pot or pots, as after the same shall be put into any pot or pots, or to take a sample or samples exceeding four ounces in the whole, out of each such pot or any other vessel or utensil containing such preparation for making glass.

Penalties and forfeitures how to be levied.

By *f. 22.* All fines, &c. by this act imposed, shall be recoverable for, &c. as any fine, &c. may be sued for, &c. by any law or statute in that behalf made, or by action, &c. in any of his majesty's courts of record at *Westminster*, and one moiety shall be to his majesty and the other to him, her, or them who shall discover, inform, or sue for the same.

Exportation.

By *f. 23.* Powers of former acts extended to this act. If glass shipped for exportation shall be re-landed, it shall be forfeited or the value thereof, over and above the penalty of the bond given on exportation, and moreover every person concerned therein shall forfeit 100l. 17 G. 3. c. 3. *f. 37.* For the drawbacks upon exportation of glass, 43 G. 3. c. 69. *Sched. (C.)*

Restriction of drawbacks enacted by 49 G. 3. c. 63.

Crown glass, &c. not to be exported otherwise than in whole, half or quarter tables, or in panes of not less than fourteen superficial inches each.

As to the spread window glass commonly called broken glass, and all other window glass not being spread glass whether flashed or otherwise manufactured, and commonly called either by the name of crown glass or German sheet glass, in 49 G. 3. c. 63. mentioned, no drawbacks shall be allowed in respect of any such glass exported, unless shipped and exported in whole tables, half tables, or quarter tables or in regular panes, squares, or rectangular figures, the four sides of which together shall measure at least 14 inches, and of which no side shall measure less than three inches, or lozenges of which the four sides together shall measure at least fourteen inches, and no side of which shall measure less than three inches and an half, and all window glass of other shape or less dimensions than as aforesaid shall be deemed to be waste glass, within the meaning of 17 G. 3. ; and if any person shall knowingly enter or ship for exportation

in order to obtain any drawback by the said act granted or allowed, any such glass not being in whole tables, &c. &c. as aforesaid, he shall for every crate, parcel, box, or package of such glass, so entered or shipped contrary to the true intent of this act, forfeit 100*l.* *f.* 48.

For the better regulating of the exportation of glass, every person intending to export any glass shall give, if within the limits of the chief office in *London* 12 hours' notice, elsewhere 24 hours, to the officer of excise, of his intention to pack up such glass, and of the time and place; and such officer shall attend and see the same packed up, and shall put a seal or mark thereon: And if any person shall open such package, or wilfully destroy or deface such seal or mark, except the officers of excise,) he shall forfeit 20*l.*— Provided that if such person shall not begin and proceed to pack up such glass at the time mentioned in such notice, or within one hour after, such notice shall be void, and he shall be obliged to give a fresh notice: And if after the shipping any such glass the same shall be relanded, or put into any other vessel within *Great Britain* (shipwreck, &c. excepted), the same shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and may be seized by any officer of excise or customs. 26*G.* 3. *c.* 77. *f.* 3; 4.

Every maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing, on pain of 50*l.* 19 *G.* 2. *c.* 12. *f.* 14.

Maker to keep scales and weights.

And by 10 *G.* 3. *c.* 44. If he shall make use of insufficient scales or weights he shall forfeit 100*l.*, but not to be prosecuted both on this and the former act. And by 28 *G.* 3. *c.* 37. the same shall be forfeited, and may be seized by any officer of excise. *f.* 15.

If in weighing his stock he put any other substance therein, whereby the officer may be hindered or impeded from taking a just account or shall forcibly obstruct such officer; he shall forfeit 100*l.* 26 *G.* 3. *c.* 77. *f.* 8.

Deceiving or obstructing the officer.

And if any maker or other person shall obstruct any officer in securing the duties; he shall forfeit 50*l.* 19 *G.* 2. *c.* 12. 17 *G.* 3. *c.* 39. *f.* 37.

The penalties to be recovered or mitigated as by the laws of excise (*a*), or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. 19 *G.* 2. *c.* 12. *f.* 39. 17 *G.* 3. *c.* 39. *f.* 41. 27 *G.* 3. *c.* 28. *f.* 13. 32 *G.* 3. *c.* 40. *f.* 9. 35 *G.* 3. *c.* 114. *f.* 27.

Power of the justices.

But no person concerned in the glass trade, or in any glass-house, shall act as a justice in any matter relating to these duties. 17 *G.* 3. *c.* 39. *f.* 38.

(a) For which see *ante*.

Note. The 51 G. 3. c. 69 relating to flint and phial glafs, is to commence, where not otherwise provided, from Aug 1st. 1811, and to continue for one year from the time of commencement in the act named, or for one year from Aug. 1812.

By the 52 G. 3. c. 54. f. 1. So much of the 49 G. 4. c. 63. as was by 51 G. 3. c. 69. continued, is again continued to Aug. 1. 1809.

And by f. 2. the 51 G. 3. c. 69. is continued to Aug. 1st. 1813.

Sect. V. (7.) *Hops*.

[9 An. c. 12. f. 6—9. 11. 14—16. 18. 24. 26.—6 G. c. 21. f. 25. 27, 28.—6 G. 2. c. 37. f. 5, 6.—7 G. 2. c. 19. f. 1, 2.—24 G. 2. c. 40. f. 29.—26 G. 3. c. 5. f. 1, 2. 4. 8.—39 & 40 G. 3. c. 81. f. 6.—43 G. 3. c. 68.—45 G. 3. c. 68.—c. 94.—49 G. 3. c. 98.—48 G. 3. c. 134.]

Importation and
exportation.

By 43 G. 3. c. 68. 45 G. 3. c. 94. 49 G. 3. c. 98. the duties upon hops are imposed.

If any foreign hops shall be landed before entry and duty paid, or without warrant for landing, the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 50 a pound. 7 G. 2. c. 19. f. 1.

Hops of *British* growth may be exported to *Ireland*, bond being first given to the commissioners of excise that the said hops shall not be reloaded, and oath made before such person as they shall appoint, that the duties have been duly charged, whereupon the person exporting the same shall have a drawback of the duties before paid; and provided the said hops shall be reloaded, or put into any ship in *Great Britain*, (except in case of shipwreck or unavoidable accident,) the same, or the value thereof, shall be forfeited over and above the penalty of such bond; and may be seized by any officer of the customs or excise. 26 G. 3. c. 5. f. 1, 2. 4.

Home duty.

And for every hundred weight of hops grown in *Great Britain*, which shall be cured and made fit for use, shall be paid by the owner or possessor thereof, a duty. 43 G. 3. c. 69. *Sched. (A.)*

Hop grounds
to be entered.

In order whereunto every person, who shall plant or have growing any hops for sale or not for sale, shall yearly on or before Aug. 1, give or send notice in writing under his hand at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish

parish, township, or place, and the name of the owner or occupier; on pain of 40s. an acre. 9 *An. c. 12. s. 6.*

But such person shall not be obliged, for giving notice, to go further than the next market town. *s. 7.*

The officer who shall receive the notice shall in five days enter the same in a book to be kept at the office for that purpose; on pain of 40s. *s. 7.*

No person shall use any ousts, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice hereof shall have been given, on pain of 50l. *s. 8.*

Places of curing and keeping to be entered.

And all hops shall in six weeks after gathering or picking be brought to be cured and bagged at such ousts or other places notified, and no other; on pain of 5s. a pound.

s. 9.

The officer shall at all times by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping hops; and if the planter or owner obstruct him, he shall forfeit 20l.

Officers to enter and survey.

s. 15.

The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise officer or officer of the duty, of the day and hour of beginning either to bag or to weigh: which notice, as to such as shall be bagged or weighed the first week, shall be given 24 hours before; and as to every other bagging or weighing 48 hours; on pain of 50l. 6 *G. 3. c. 21. s. 25.*

Notice of bagging and weighing.

But by 39 & 40 *G. 3. c. 81.* No such owner, planter, or grower shall be obliged to give more than 24 hours notice of his intention to weigh hops; provided that the particular time be specified in such notice, which shall be between the hours of four in the morning and five in the evening. *s. 6.*

Twenty-four hours' notice of weighing sufficient.

And the officer shall cause an entry of the said weight to be made in his book; and shall make return thereof in writing to the commissioners or to whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 *G. 3. c. 28. s. 30.*) he shall forfeit 5l. 9 *An. c. 12. s. 11.*

Officers to attend.

Every owner and grower shall keep just and sufficient scales and weights at the place of weighing, and shall permit any supervisor to use the same for re-weighing; on pain of forfeiting 50l. And if any such person shall, for the re-weighing of such hops, make use of any insufficient scales or weights, or practise any device to deceive such supervisor, he shall forfeit 100l. together with such false scales and weights,

Owners to keep scales and weights.

which may be seized by any officer of excise. 39 & 40 G. 3. c. 81. *f.* 8.

Owners to assist
in weighing if
required.

Every owner and grower when required by any supervisor shall cause his hops to be put into and taken out of the scale, and shall with a sufficient number of his servants assist in the re-weighing thereof, on pain of forfeiting for every neglect and refusal 50*l.* *f.* 9.

No inferior of-
ficer to weigh
hops between
certain hours.

No officer inferior to a supervisor shall be permitted to weigh hops between the hours of five in the evening and four in the morning, and if any such owner or grower shall suffer any inferior officer to weigh hops between the hours aforesaid, he shall forfeit 20*l.* *f.* 7.

The 14 G. 3.
c. 68. repealed.

By 39 & 40 G. 3. c. 81. the 14 G. 3. c. 68. is repealed, and in lieu thereof after 28th *July* 1800 every owner or grower of hops, before he begins to put any hops into any bag or pocket, shall mark on the outside of each in large legible characters, with durable ink or paint, his name and place of abode; on pain of forfeiting 20*l.* *f.* 1, 2.

Bags to be
marked.

Weight of the
bags.

No hops shall be bagged into any bag of greater weight than in the proportion of 10*lb.* for every 112*lb.* of the gross weight of bag and hops; on pain of forfeiting 20*l.* *f.* 3.

Officer to mark
the gross weight
on the bag.

When the officer of excise shall have weighed and taken an account of any hops for the purpose of charging the duty thereon, he shall mark in like manner on every bag or pocket the gross weight thereof, together with the year in which such hops were grown, and the progressive number according to the number of bags charged to each owner, planter, or grower in each such current year. And if any person shall counterfeit or alter any such marks, or procure the same to be done, he shall forfeit 100*l.* for every such offence. And if any person shall wilfully deface or obliterate any mark hereby directed to be made, or cause the same to be done or connive thereat, he shall forfeit 20*l.* *f.* 4.

Penalty on
counterfeiting
such mark, or
defacing the
same.

Hops may be
put into casks
instead of bags.

The owners may, if they think fit, put the hops into casks instead of bags, giving the like notice, and being subject to the same regulations, for casking as for bagging. 6 G. c. 21. *f.* 27, 28.

And the officer shall cause the casks to be weighed, and the weight to be marked on the cask, and also the weight of the hops therein. *f.* 28.

By the 48 G. 3. c. 134. It is enacted, that in addition to the marks required to be made on the outside of every bag and pocket of hops there shall be marked by the owner, planter, or grower of hops, in the form and manner in which the before-mentioned particulars are required to be marked, the name of the parish and of the county in which the hops put into any such bags or pockets were or shall be grown, and

and if any owner, &c. shall put hops into any bag or pocket before the same shall have been marked as by this act required, he shall for each such offence forfeit 20l.

And by *f. 2.* The counterfeiting, wilfully removing, altering, erasing, or obliterating, or causing, procuring, or suffering to be counterfeited, &c. any marks required by this act, or any other then in force, to be put or marked on bags or pockets of hops, incurs for each offence a fine of 20l.

By *f. 3.* These penalties to be recovered as other penalties may by the excise laws be recovered; one moiety to the king and one to the informer.

No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops; on pain of 10l. a hundred weight. And if any person shall endeavour to defraud the king of the duty, by using twice or oftener the same bag, with the officer's mark thereupon, he shall forfeit 40l. *9 An. c. 12. f. 23.*

Deceit in bagging.

No planter or owner shall (on pain of 50l.) remove or suffer to be removed from his out, storehouse, or other place, any hops until they have been cured, bagged, and weighed, and the duties ascertained; unless where the officer, after notice, shall not attend the bagging and weighing. *f. 16.*

Removal before bagging.

No hops shall be removed from the place of weighing until 12 hours next after, unless the same shall have been re-weighed by the supervisor, and if upon any such re-weighing any additional weight shall be found, the same shall be charged with the duty; and if any such owner or grower shall convey or cause to be conveyed away any such hops contrary to the meaning hereof, he shall forfeit 50l. for every such offence. *39 & 40 G. 3. c. 81. f. 5.*

Hops not to be removed for 12 hours unless re-weighed by the supervisor.

And every person, who shall obstruct or hinder any officer of excise in the due execution of this act, shall forfeit 100l. *f. 10.*

Obstructing officers.

If any planter or owner shall conceal any hops, to avoid the duties, he shall forfeit 20l. and the hops concealed. *f. 17.*

Concealing.

If any picker or gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5s. a pound. *9 An. c. 12. f. 18.*

Privately conveying.

The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties, on pain of double duty, two-thirds to the king and one-third to the informer. *f. 14.*

Payment of the duties.

If any person shall mix with hops any drug or other thing to alter the colour or scent, he shall forfeit 5l. a cwt. (P.) *7 G. 2. c. 19. f. 2.*

Adulterating hops.

T. 35 G. 3. R. v. Pack. The defendant was convicted on the above act in the penalty of 5*l.* for putting in the fire by which 100 cwt. of hops were drying, a quantity of sulphur and brimstone to alter the colour thereof, the vapour and fumes of which ascended to the hops placed over such fire, and, the hops being then in a moist state, fixed to the hops and made them appear brighter. *L. Kenyon* was clearly of opinion that this was an offence within the act of parliament, even though the vapours were a melioration of the hop (which was not the case), and the conviction was affirmed. 6 *T. R.* 374.—[The vapour of the brimstone gives a false colour and a false value to the hops.]

Using other things instead of hops.

No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or any other bitter ingredient, in brewing beer or ale for sale, to serve instead of hops, on pain of 2*ol.* (except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer. 9 *An. c.* 12. *f.* 24. and see tit. (*Ale, &c.*) *ante*.)

Penalties how to be recovered.

The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise (*a*) and distributed half to the king and half to him that shall sue. 9 *An. c.* 12. *f.* 26. 24 *G. 2. c.* 40. *f.* 29. 26 *G. 3. c.* 5. *f.* 8. 39 & 40 *G. 3. c.* 81. *f.* 11.

Hops liable to distress for the duties and penalties.

And all hops in the custody of any planter or owner, or persons in trust for him, shall be liable to the duties in arrear, and to the penalties, in the same manner as if the debtor or offender were the lawful owner. 9 *An. c.* 12. *f.* 19.

Cutting hop-binds.

If any person shall unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, he shall be guilty of felony, without benefit of clergy. 6 *G. 2. c.* 37. *f.* 5, 6.

Which offence is treated of more at large in the title *Black Act*.

Sect. V. (8.) *Leather*.

[2 *An. c.* 11. *f.* 28. — 9 *An. c.* 11. *f.* 3. 6. 13. 17. 19—23. 25—27. 36—38. 44. 47. — 5 *G. 2. c.* 2. *f.* 9, 10. — 5 *G. 3. c.* 43. *f.* 21, 22. — 10 *G. 3. c.* 44. *f.* 1. — 15 *G. 3. c.* 35. — 24 *G. 3. sess. 2. c.* 41. *f.* 1. — 26 *G. 3. c.* 77. *f.* 8. — 28 *G. 3. c.* 37. *f.* 15. — 31 *G. 3. c.* 43. *f.* 7. — 34 *G. 3. c.* 63. — 35 *G. 3. c.* 97. — 38 *G. 3. c.* 54. *f.* 10. — 41 *G. 3. U. K. c.* 91. *f.* 10. 12. 16—18. 26. — 43 *G. 3. c.* 69. *f.* 7, 8.]

Importation and exportation.

By 43 *G. 3. c.* 69. a duty is laid upon all hides and skins, vellum and parchment, imported; and drawbacks allowed

(a) For which see *ante*, Sect. III.

on the importation thereof. *Sched. (A.)* and other duties are also imposed by 49 G. 3. c. 98.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 *An. c. 11. f. 6. 44.*

But by the 15 G. 3. c. 35. Raw or undressed goat skins may be imported for five years duty free; which act is by 31 G. 3. c. 43. *f. 7.* made perpetual.

The said several duties for and upon all hides and skins, and parts and pieces of hides and skins, tanned, tawed, or dressed, to be paid by the tanners, tawers, and dressers of hides and skins respectively.

And the duties upon vellum and parchment to be paid by the respective makers thereof.

And certain drawbacks are allowed on the exportation thereof.

By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shumack; and by hides and skins *dressed in oil* are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allum and salt, or meal or other ingredients, properly used by the tawers of white leather. 9 *An. c. 11. f. 3.*

What is meant by hides tanned, dressed in oil, and tawed.

[*N. B.* By 34 G. 3. c. 63. *Samuel Aston* is allowed to tan hides and skins in a particular manner as mentioned in his letters patent. And by 35 G. 3. c. 97. all hides and skins tanned by the said method, or by any method whatever, shall be deemed to be within the meaning of the acts relating to the duties on hides and skins.]

And by 43 G. 3. c. 69. Every tanner shall take out a licence annually, for which he shall pay, if within the bills of mortality, 5l. elsewhere 2l. 10s. on pain of 30l. 24 G. 3. c. 41. *sess. 2. f. 1.*

Licences to be taken out by tanners.

Every *tawer* shall take out a licence annually, for which he shall pay 1l. on the penalty of 10l. *Id.*

Tawers.

And every *dresser of hides in oil* shall take out a licence annually, for which he shall pay 2l. on the penalty of 20l. *Id.*

Dressers in oil.

And every *currier* shall take out a licence annually, for which he shall pay 2l. on the penalty of 20l.

Curriers.

And every maker of *vellum or parchment* shall take out a licence annually, for which he shall pay 1l. on the penalty of 10l. *Id.*

Makers of vellum.

And every person who shall take out such licences shall renew the same annually, ten days at the least before the end of the year, on the like penalties as aforesaid. *Id. f. 7.*

Licences to be renewed annually.

Persons in partnership.

Provided, that persons in partnership need only take out one licence for one house. *Id.* f. 8.

Who deemed tawers or dressers.

Collar-makers, glovers, bridle-cutters, and others, who dress skins or hides, or pieces thereof, in oil, allum, and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 *An.* c. 11. f. 28.

No leather to be twice charged.

Any hide or skin which hath once paid the duty, under one denomination, shall not be charged under any other denomination. 9 *An.* c. 11. f. 3.

Officers for these duties.

The commissioners of the treasury shall appoint commissioners of these duties, who shall have the same powers as the commissioners of the excise. f. 13. 38.

Places of working to be entered.

Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same, on pain of 50l. f. 15.

And if any person shall not make due entry, and give account of the hides and skins, or shall use any private tan-yard, workhouse, pit, fat, mill, or place, he shall forfeit 20l. and the goods found in such private tan-yard or place not entered, or the value thereof, shall also be forfeited. f. 17.

Officers to enter and survey.

The officers, at all seasonable times, in the day-time, may enter into any tan-yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10l. *Id.*

Hides found in unentered place. Penalty 100l.

And if any hide or skin, tanned, tawed, or dressed in oil, shall be found in any place (except on entered premises) without having thereon the stamp, denoting the charging of the duty, the same shall be forfeited and seized; and the person in whose possession it shall be found shall for each offence, forfeit 100l. 41 G. 3. U. K. c. 91. f. 10.

Notice of removing to the place of drying.

The said tanners and others shall give notice to the officer of their places for drying and keeping hides or skins, vellum or parchment, and they shall give two days' notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, or before the hanging up in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice or collector or supervisor; and they shall not remove any of the

said goods from the place of drying until the duty be first charged, entered, and marked. 9 *Ann. c. 11. f. 16.*

If any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act, he shall forfeit 20*l.* and such goods or the value thereof.

Penalty for neglect.

f. 17.

If any tanner or other such person shall conceal any hide or skin, vellum, or parchment, or any part thereof; he shall forfeit 20*l.* and also the goods concealed, or the value thereof. *Id.*

Concealing to avoid the duty.

And if any tanner or other person shall shave any hide or calf skin before the same be thoroughly tanned, whereby it shall be impaired and the duty diminished; the same shall be forfeited, or the value thereof. *f. 12.*

Shaving hides.

Tanners and other the said persons shall keep sufficient and just scales and weights; and sworn officers shall be appointed for the weighing and other matters to be performed at every such yard or dressing place. *f. 18.*

Tanners to keep scales and weights.

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring them to the scales, or to assist at the weighing; he shall forfeit 50*l.* *f. 26.*

Penalty for neglect.

By the 10 *G. 3. c. 44. f. 1.* If he shall use false or insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted both on this and any former act: and by the 28 *G. 3. c. 37. f. 15.* the same shall be forfeited, and may be seized by any officer.

Using false scales.

And if in the weighing of stock he shall put any other substance therein, or shall forcibly hinder or by any contrivance prevent such officer from taking a just account; he shall forfeit 100*l.* 26 *G. 3. c. 77. f. 8.*

Cheating or obstructing officers.

Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days' notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the same to the scales; and assist in weighing, and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before a justice of the peace for the said officer. 9 *Ann. c. 11. f. 19.*

Duty to be ascertained before removal.

And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they

Charge by the officer.

shall appoint, leaving a true copy thereof under his hand, with such tanner or other person. *f. 20.*

Leather to be marked.

Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin and all vellum and parchment to be marked. *f. 21.*

In what part to be marked.

If such tanner or other person shall desire the mark to be made on any particular part of the hide or skin, the officer shall mark it accordingly. *f. 22.*

Removing before marked.

If any tanner, or other such person, shall remove from his yard or drying place any the said goods before the duty shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked, he shall forfeit 5*ol.*; and the said goods so unlawfully sold or removed shall also be forfeited. *f. 26.*

Counterfeiting the stamp.

If any person shall counterfeit the stamp, or the impression of the same, or knowingly sell any of the said goods with a counterfeit stamp or impression; he shall be guilty of felony without benefit of clergy. *9 An. c. 11. f. 44. 5 G. c. 2. f. 9. 38 G. 3. c. 54. f. 10.*

Leather stamped to be kept separate.

To prevent frauds between the officers and dealers all tanners, tawers, and dressers of hides, skins, vellum, and parchment shall keep those which have not been stamped from those which have, and also those which have been last stamped from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor; on pain of 1*ol.* *5 G. c. 2. f. 10.*

And not to be removed till after 24 hours.

And they shall not remove or suffer to be removed the same for 24 hours from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, that so they may have an opportunity to re-weigh the same after the inferior officers: And if any additional weight shall be found, the said hides or skins, or pieces thereof, shall be charged accordingly. And if such tanner, tawer, or dresser shall remove or cause or suffer the same to be removed contrary hereunto; he shall forfeit 2*ol.* *5 G. 3. c. 43. f. 21.*

He shall keep scales and weights for such re-weighing, and bring the hides and skins and pieces thereof to the scales; and assist the surveyor and supervisor in re-weighing and examining from time to time the depending stock of such tanner, tawer, or dresser; on pain of 5*ol.* *f. 22.*

Payment of the duties.

Persons within the bills of mortality shall pay off the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors after the said goods shall be marked. *9 An. c. 11. f. 23.*

But

But no person shall be obliged for payment of the duties to go further than the next market town. *f. 24.*

Persons not paying as aforesaid shall forfeit double duty; and shall not deliver out any of the said goods until the duty be paid, on pain of double value. *f. 25.*

Every tanner, and other such person, shall once in three months (if demanded) make an account with the officer of the goods taken out of the wooze, mill liquor, or other ingredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50*l.* *f. 27.*

Tanners to balance accounts with the officers.

Any two justices residing near may hear and determine offences; who shall, on information or complaint in three months after seizure made, or offence committed, summon the party accused and the witnesses, and on appearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale if not redeemed in six days.) *f. 36.*

Penalties how recoverable.

They may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. *f. 37.*

Mitigation.

Persons aggrieved may appeal to the next sessions, who may determine the same, and in case of conviction issue warrants for levying the penalties. *f. 36.*

Appeal.

And no *certiorari* shall be allowed. *f. 47.*

Certiorari.

Sect. V. (9.) *Linen cloth, silks, cottons, and callicoes.*

10 An. c. 19. *f. 71—75. 77—79. 81—83. 92. 97. 98. —*
 1 G. 1. c. 36. *f. 21. — 5 G. c. 11. f. 15. — 7 G.*
ft. 1. c. 7. f. 1—4. 11. — 12 G. c. 28. f. 30. — 9 G. 2.
c. 4. — 24 G. 2. c. 40. f. 29. — 4 G. 3. c. 37. f. 17—26.
28. 31. — 7 G. 3. c. 47. f. 6. — 13 G. 3. c. 56. — 14 G. 3.
c. 72. f. 1—5. 8—12. 14. — 25 G. 3. c. 72. f. 7—15.
17—23. 27—30. 33, 34. — 25 G. 3. c. 74. f. 17—23.
— 27 G. 3. c. 31. f. 12, 13. 15. — 28 G. 3. c. 37. f. 21.
— 43 G. 3. c. 69. — 49 G. 3. c. 98. — 50 G. 3. c. 26. —
 51 G. 3 c. 33.]

By the 43 G. 3. c. 69. all former duties are repealed. *f. 1.* Former duties repealed.
 and in lieu thereof other duties are imposed upon all goods which shall be printed, stained, painted, or dyed in Great Britain, Schedule (A). And by 50 G. 3. c. 26. certain export duties are imposed. New duties.

The said duties to be paid by the printer, stainer, painter, dyer thereof,

And

And by the 49 G. 3. c. 98. certain duties of customs are imposed upon *French* linens (or lawns).

License.

And by 43 G. 3. c. 69. *Sched. (A.)* Every calico printer, and every printer, painter, or stainer of linens, cottons, or stuffs, shall pay annually for a license 10l.

Ribbands and silks.

And by 7 G. 3. c. 47. All ribbands and silks printed, stained, or painted in *Great Britain*, though less than half a yard in breadth, are within the meaning of 12 An. c. 9. and 6 G. 1. c. 4. liable to the said duties, according to the proportions in which such ribbands and silks are made. *f. 6.*

Observation as to calicoes.

But it is to be observed that such painted or stained calicoes cannot be used for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation; for by the 7 G. 3. c. 7. it is enacted that no person shall use or wear in any apparel any printed, painted, stained, or dyed calico; on pain of 5l. to the informer, on conviction on the oath of one witness before one justice; who shall on information on oath in six days after the offence summon the party, and upon his appearance or contempt examine the matter, and on proof by confession or oath of one witness determine the same, and on conviction cause the penalty by warrant to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted): Provided that persons aggrieved may appeal to the next quarter sessions, giving six days' notice, and the sessions shall hear and determine the same, and their judgment be final. *f. 1.*

Prohibition of calicoes.

Penalty on selling them;

And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for exportation; he shall forfeit 20l. half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. *f. 2. 4.*

or using them, in furniture.

No person shall use the same in any household furniture on like pain of 20l. *f. 3.*

Exceptions.

But this shall not extend to calicoes dyed all blue. *f. 11.*

But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to calico chequered or striped; and to calico stitched or flowered in foreign parts with any colour or with coloured flowers made there (mullins, neckcloths and fustians excepted). *f. 10.*

But it shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in *Great Britain*, provided the warp thereof be entirely linen yarn. 9 G. 2. c. 4.

By the 14 G. 3. c. 72. Whereas doubts have arisen whether stuffs wholly made of cotton spun within this kingdom ought not to be considered as *calicoes*, and as such be liable to the like duties, penalties, and prohibitions, it is enacted that no greater duty shall be paid for the same than [$3\frac{1}{2}$ d. a yard as aforesaid, 43 G. 3. c. 69.] and that any person may use the same in apparel or otherwise. *f. 1, 2.*

Observations as to cottons.

And in every piece thereof shall be woven in the warp in both selvages three blue stripes, each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the said stripes shall be the third thread, and the third of the said stripes shall be the fifth thread: and each piece shall be stamped at each end with a stamp to be provided by the officers of excise; and instead of the word *calico*, which stands for foreign calicoes, each piece shall be marked with the words *British manufactory*. *f. 3.*

To have three blue stripes in the edge.

If any person shall expose to sale any stuffs wholly made of cotton, and printed, painted, stained, or dyed, (muslins, neckcloths, and fustians excepted,) wherein such mark shall not be woven; he shall forfeit the same, and 50*l.* for each piece. 14 G. 3. c. 72. *f. 4.*

Selling without such mark.

Provided always, that nothing in this act shall extend to cotton velvets, velverets, or other fustians, not manufactured in *Great Britain*. *f. 5.*

Exception.

If any person shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp; he shall be guilty of felony, without benefit of clergy. *f. 8. 10:*

Counterfeiting stamps.

If any person shall import any calicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein shall be wove in the selvedge any such blue stripe; he shall forfeit the same, and 10*l.* for each piece. *f. 9.*

Importing calicoes so marked.

And upon oath made by any person that he hath reason to suspect that any printed, painted, stained, or dyed stuffs, wholly made of cotton, for which a duty ought to have been paid, are in the custody or possession of any draper or of any other person for his use, without having thereupon such stamps or marks as aforesaid, two commissioners within the bills, and two justices elsewhere, shall issue their warrant to any officer of the said duties with the assistance of a constable in the day time, to search for the same, and to open doors, trunks, chests, and package, and to seize such goods, and bring them to the next office for the said duties. *f. 11.*

May be searched for.

One moiety of the penalties and forfeitures in this act shall be to the king, and the other moiety to him who shall sue. *f. 12.*

And if any question shall arise, whether any of the said stuffs wholly made of cotton were manufactured in *Great Britain*,

Proof to lie on the owner.

Britain, the proof shall lie on the owner and not on the prosecutor. *f.* 14.

But by 51 G. 3. c. 33. the provisions in the 14 G. 3. c. 72. for weaving the three blue stripes, and the penalties relating to the same; and the provisions of 25 G. 3. c. 72. relating to the same subject are respectively repealed.

Entry of name
and house.

Every such printer, painter, stainer, or dyer shall give notice in writing at the next office of his name and place of abode, and where he intends to work; on pain of 50*l.* 10 *An. c.* 19. *f.* 71. 25 G. 3. c. 72. *f.* 7.

And by the 1 G. 3. c. 36. Where any person shall take upon him to print, paint, stain, or dye any silks, calicoes, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade, he shall first make entry of such silks, &c. with the officer of the division where he intends so to do, and pay down the duties; on pain of 50*l.* and also of seizure and forfeiture of the said goods. *f.* 21.

Officers to enter
and take ac-
count.

The officers shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy, if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 G. c. 28. *f.* 30.) he shall forfeit 40*s.* 10 *An. c.* 19. *f.* 75.

Obstructing the
officer.

And none of the said persons shall obstruct the officer in execution of his duty; on pain of 20*l.* 10 *An. c.* 19. *f.* 78. 25 G. 3. c. 72. *f.* 8.

Entry of goods
made.

Every such printer and other person shall once in six weeks make entry in writing at the next office on oath before the collector or supervisor of all such goods by them made, containing the kinds and quantity and the names and places of abode of the owners (if they are not their own); on pain of 50*l.* 10 *An. c.* 19. *f.* 72.

But no person shall be obliged to go to make entry further than the next market town. *f.* 73.

Officer may
charge for goods
missing.

If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall not on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. *f.* 77.

Pieces to be
marked before
printing, &c.

And no printer shall begin to print, stain, paint, or dye any of the goods aforesaid before they shall have been measured and marked at both ends by the officer with a frame mark, denoting the measure; on pain of forfeiting the same, and also 20*l.* for every piece by him in whose possession they shall be found. 25 G. 3. c. 72. *f.* 9.

- If any printer, &c. shall wilfully cut out or deface such frame mark, he shall forfeit 50*l*. *Id.* *f.* 11. Defacing frame marks.
- If he shall conceal any of the said goods, before printed, &c. to avoid duty, he shall forfeit 50*l*. And all the silks, calicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 *An. c.* 19. *f.* 82. 25 *G. 3. c.* 72. *f.* 13. Goods concealed.
- No printer, &c. shall keep any such goods, marked or unmarked, in any room or place whereof no notice shall have been given as afore said; on pain of forfeiting 50*l*. and also such goods, which may be seized by any officer. 25 *G. 3. c.* 72. *f.* 14. Keeping goods in un-entered places.
- He shall within six weeks after entry clear off the duties, on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off; they shall forfeit double value of the goods. 10 *An. c.* 19. *f.* 74. Payment of the duties.
- No person who shall print, &c. shall remove any the said goods until the officer hath taken an account thereof, and until each piece be stamped or marked at both ends thereof; on pain of 50*l*. And the same so carried away without being marked, and found in the possession of any draper or other person for his use for sale, may be seized or the value thereof recovered. 10 *An. c.* 19. *f.* 79. 25 *G. 3. c.* 72. *f.* 10. Removing before stamped.
- They shall keep the goods which have not been surveyed separate from the goods which have been surveyed; on pain of 50*l*. 10 *An. c.* 19. *f.* 81. 25 *G. 3. c.* 72. *f.* 12. Goods surveyed to be kept separate.
- And on oath by any credible person that he hath reason to suspect that any of the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and packages, and to seize such goods, and bring them to the next office: and such commodities so found shall be forfeited. 10 *An. c.* 19. *f.* 98. 25 *G. 3. c.* 72. *f.* 18. Search for goods unstamped.
- If any of the said goods shall be found in any place on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged, the same shall be forfeited and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 100*l*. 5 *G. c.* 11. *f.* 15. 27 *G. 3. c.* 31. *f.* 16. Goods found unstamped may be seized.

And

Calicoes, &c. to have three blue threads in the selvedge.

And all stuffs wholly made of cotton wool commonly called *calicoes*, that shall not have three blue threads in each selvedge as directed by 14 G. 3. c. 72., shall be deemed *foreign calicoes*, and on their being printed or dyed as aforesaid shall be marked at both ends of every piece or remnant with the words, "foreign calicoes for exportation;" and every draper or dealer who shall have in his custody any such goods, (except dyed throughout of one colour,) or any stuffs wholly made of cotton wool wove in *Great Britain*, commonly called *British manufactory* (muslins, neckcloths, and fustians excepted) not having such blue threads, shall forfeit 20*l.* and also every such piece found in his custody. 25 G. 3. c. 72. f. 19. See 51 G. 3. c. 33. *ante*.

To be marked before printing with a frame mark.

The owner or printer of any piece or remnant of *casfae* or foreign *muslins* and *calicoes* shall, before they are presented to the officer, mark the same at both ends with a frame mark, containing in words at length his name and place of abode, and also the name such goods are commonly known by, (except those dyed throughout of one colour,) on pain of forfeiting the said goods, and 10*l.* for every piece or remnant. *Id.* f. 20.

Name of the owner or printer and value of the goods to be marked.

The owner or printer of any piece or remnant of linens or stuffs made of cotton mixed, or wholly made of cotton wool wove in *Great Britain*, called *British manufactory* or *muslins*, plain, chequered, striped, figured, or ornamented, (except fustians, velvets, velverets, dimities, and other figured stuffs,) shall mark the same at both ends with a frame mark, containing in words at length his name and place of abode, and the name and quality of such goods, with the ready money price thereof, before the same is presented to the officer in order to be printed, stained, painted, or dyed: And if the owner is not the printer, &c., then he shall deliver a note with such goods, expressing the number of pieces, &c. their quality and value, and the time when delivered to the printer &c.; which note shall be delivered by him to the officer before the same are printed, &c. (except those dyed of one colour as aforesaid,) on pain that every such piece, &c. not so marked shall be forfeited, and may be seized by any officer; and the owner, or person putting out the same, shall forfeit 20*l.* And if such person shall mark any such piece at a less price than the real value as aforesaid, he shall forfeit the same, which may be seized as aforesaid, and also 20*l.* *Id.* f. 21.

Frame marks being defaced.

If the frame mark shall be obliterated or defaced, the printer shall give notice thereof to the officer who shall renew the same. *Id.* f. 22.

If any person shall counterfeit or forge any frame mark, to denote the measure, he shall forfeit 100*l.* *Id.* *f.* 23. Counterfeiting the frame mark.

27 *G.* 3. *c.* 31. *f.* 22.

If any person shall counterfeit the stamp he shall be guilty of felony without benefit of clergy. *Id.* *f.* 17. Counterfeiting the stamps.

If any person shall knowingly sell any of the said goods with a counterfeit stamp, he shall forfeit 100*l.*, and be set in the pillory in some public place two hours. 10 *An.* *c.* 19. *f.* 97. 13 *G.* 3. *c.* 56. 25 *G.* 3. *c.* 72. *f.* 17.

Moreover by 27 *G.* 3. *c.* 31. if any person shall knowingly sell any of the said goods with such counterfeit stamp, with intent to defraud his majesty, he shall be guilty of felony without benefit of clergy. *f.* 14.

Every person who hath paid the duties, or bought such goods of any person who hath paid the duties, may export the same, and shall be allowed all the duties in drawback, as set forth in 43 *G.* 3. *c.* 69. *Sched.* (C.) on conforming to the following conditions, (*viz.*) The person intending to export such goods shall give 12 hours' notice in writing if within the limits of the chief office, (elsewhere 24 hours,) of his intention to pack up the same, and of the time and place, to the officer appointed for that purpose, who shall measure the said goods, and see that the stamps and frame marks be taken off; and every piece shall be packed up in the presence of such officer, and shall be sealed and marked as the commissioners shall direct; and if any person shall open such package, or deface such seal or mark, (except the officer at the port of exportation,) he shall forfeit 20*l.* And the officer who saw the same packed up shall take an account of the kinds and quantities thereof, and make a return to the officer who shall be appointed to receive the said goods at the port of exportation. And such person shall also give six hours' notice in writing to such officer of the time and place of shipping the same; and shall give bond that such goods shall not be unshipped or relanded, or put into any other vessel (unavoidable accident excepted.) And if any person shall unship or reland, or put into any other ship (except as aforesaid) any such goods, the same shall be forfeited over and above the penalty of such bond. 25 *G.* 3. *c.* 72. *f.* 27, 28, 29, 30. 25 *G.* 3. *c.* 74. *f.* 17. 19, 20, 21. Exportation.

If such person shall not begin to pack such goods within one hour after the time mentioned in such notice, the same shall be void, and he shall be obliged to give a fresh notice. 25 *G.* 3. *c.* 74. *f.* 18.

But nothing herein shall extend to authorize the exportation of any goods, other than the same might have been exported before, nor to alter the manner thereof, except as aforesaid. *f.* 22, 23.

By

Regulations
concerning
cambricks and
lawns made in
England.

By the 4 G. 3. c. 37. (which establishes the corporation of the *English* linen company for making cambricks and lawns) it is enacted that the commissioners of excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *f. 17, 18.*

The manufacturer to give notice in writing to the officer of the finishing of every piece, before it is taken out of the loom, who shall seal the same at both ends; on pain that such manufacturer, taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l.*; and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *f. 19.*

And the officer with convenient speed, after notice shall mark and also number each piece; before it is taken out of the loom; and make entry in writing in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l.* *f. 20.*

If the officer shall mark any not made in *England* or *Wales*, or after the same has been taken out of the looms, he shall forfeit 50*l.* for each piece to him who shall sue, and lose his office, and be incapacitated to hold any other office of trust under the crown. *f. 21.*

If any person shall offer to the officer any bribe to fix the mark to any pieces not so made, he shall forfeit 50*l.*; and if he shall by bribery or otherwise prevail upon the officer to commit such offence, he shall forfeit 100*l.* and stand in the pillory two hours. *f. 22.*

And the officer shall yearly, in the month of *June* transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made, on pain of dismissal; and he, or his executors, shall deliver up the seals, on demand from the commissioners, on pain of 200*l.* *f. 23.*

Cambricks and lawns made in *England* found unstamped shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold: And every person who shall sell or expose to sale or have in his custody for that purpose any cambricks or lawns made in *England*, unmarked, shall forfeit 200*l.* *f. 24.*

But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse until bond be given, to the satisfaction of the

the collector, in double penalty of the goods, that the same shall be exported, and not reloaded. *f.* 25.

To counterfeit the seal appointed by this act; or import any foreign cambricks or lawns having such counterfeit mark thereon; or expose the same to sale knowing the stamp thereon to be counterfeited; is felony without benefit of clergy. *f.* 26.

All goods condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who, pursuant to the directions of this act, shall seize, inform, or sue. *f.* 28.

And if any question shall arise, where the goods were manufactured, the proof shall lie on the owner or claimer, and not on the officer. *f.* 31.

The penalties (except as is above mentioned in relation to calicoes) may be sued for, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*; and shall be employed half to the king, and half to him that shall discover, inform, or sue. 10 *An. c.* 19. *f.* 92. 24 *G. 2. c.* 40. *f.* 29. 25 *G. 3. c.* 72. *f.* 33, 34.

Power of the justices.

And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c.* 19. *f.* 83. 25 *G. 3. c.* 72. *f.* 15. 28 *G. 3. c.* 37. *f.* 21.

Utensils liable

Sect. V. (10.) *Malt.*

[2 & 3 Ed. 6. c. 10. *f.* 2—5.—12 *An. st.* 1. c. 2. *f.* 4. 6. 7. 9. 15. 17. 30. 36—38.—1 *G. st.* 2. c. 2. *f.* 4.—6 *G. c.* 21. *f.* 4.—9 *G. c.* 3. *f.* 35. 37.—12 *G. c.* 4. *f.* 48—51. 53—58.—c. 28. *f.* 30.—1 *G. 2. st.* 2. c. 16. *f.* 3. 13.—2 *G. 2. c.* 1. *f.* 11.—3 *G. 2. c.* 7. *f.* 16. 18.—24 *G. 2. c.* 40. *f.* 29.—33 *G. 2. c.* 7. *f.* 14.—1 *G. 3. c.* 3. *f.* 9. 11. 15. 16. 18.—3 *G. 3. c.* 13. *f.* 1.—23 *G. 3. c.* 64.—24 *G. 3. c.* 41. *sess.* 2. *f.* 7, 8.—28 *G. 3. c.* 37. *f.* 21.—33 *G. 3. c.* 7. *f.* 55, 56. 58. 64.—42 *G. 3. c.* 38. *f.* 28, 29. 31—34. 36.—43 *G. 3. c.* 69. *f.* 3.—c. 81. *f.* 2.—44 *G. 3. c.* 16. *f.* 4. 7.—46 *G. 3. c.* 139. *f.* 1.—47 *G. 3. st.* 2. c. 37.—48 *G. 3. c.* 36.—c. 74.—50 *G. 3. c.* 1.—52 *G. 3. c.* 128.]

(a) For which see *ante*, Sect. III.

No malt to be imported.

Duties.

License.

By the 12 *An. st. 1. c. 2.* No malt shall be imported, on pain of forfeiting the same, and the value thereof. *f. 26.*

By the 43 *G. 3. c. 69.* Additional duties are likewise imposed.

Every *maltster* or maker of malt for sale, shall take out a license from the office of excise annually, and pay for the same 5s., if the quantity of malt made by him shall not exceed within the year, ending the 23d *June* in each year previous to his taking out such license, the quantity of

				50 quarters	£.	s.	d.
If above 50	-	-	-	and under 100	-	0	10 0
If above 100	-	-	-	and under 150	-	0	15 0
If above 150	-	-	-	and under 200	-	1	0 0
If above 200	-	-	-	and under 250	-	1	5 0
If above 250	-	-	-	and under 300	-	1	10 0
If above 300	-	-	-	and under 350	-	1	15 0
If above 350	-	-	-	and under 400	-	2	0 0
If above 400	-	-	-	and under 450	-	2	5 0
If above 450	-	-	-	and under 500	-	2	10 0
If above 500	-	-	-	and under 550	-	2	15 0
If above 550	-	-	-	-	-	3	0 0

and a surcharge.

And every person who shall first become a maltster, for every such license 5s., and within ten days after the 5th of *July* next after taking out such license, such further additional sum as, with the said 5s. shall amount to the duty hereinbefore charged, according to the quantity of malt made by him within the preceding year. 43 *G. 3. c. 69. Sched. (A.)*

If he shall neglect to take out such license and renew the same annually, ten days at least before the end of the year, he shall forfeit 10l. 24 *G. 3. c. 41. f. 2. f. 7.*

But persons in partnership need only take out one license for one house. *f. 8.*

Officers for these duties.

The said duties shall be under the management of the commissioners and officers of excise. 43 *G. 3. c. 69. f. 3. c. 81. f. 2. 50 G. 3. c. 1.*

Places of making to be entered.

No person making malt (other than compounders) shall set up, alter, or use any cistern, uting fat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common making house; on pain of 50l. 12 *An. st. 1. c. 2. f. 36.*

And in order that it may be ascertained when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping, the maltster, within a city or its suburbs or market town, shall give 24 hours' (elsewhere 48 hours') notice in writing to the officer of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he shall not begin and immediately after proceed to cover the whole thereof with water at the time mentioned in the notice, or within three hours after, the notice shall be void; and he shall be obliged to give a fresh notice before he shall begin. And if he shall not give such notice, or having given notice which shall become void, shall not give a fresh notice; or having begun to wet such corn shall not immediately proceed to cover the whole with water, and continue the same covered for 40 hours [but see 42 G. 3. c. 38. s. 32. *post*]; or after the officer hath taken account of the corn steeping, shall add any fresh corn or grain; he shall, for every such offence, respectively, forfeit 100l. 3 G. 3. c. 13. s. 1. See also 48 G. 3. c. 74. s. 2. (*post*.)

Notice to be given of beginning to wet.

The corn to continue covered with water for 40 hours.

He shall not begin to wet or steep any corn or grain to be made into malt at any other time than between 8 in the morning and 2 in the afternoon, nor shall he empty any corn or grain out of the cistern, uting vat, or other vessel or utensil used for such wetting or steeping, at any other time than between 7 in the morning and 4 in the afternoon, on pain of 100l. for each offence. 42 G. 3. c. 38. s. 28.

Hours when to begin to wet.

And out of every twenty bushels of malt, gaged and charged upon the floor, after the same shall have been taken out of the cistern, &c. by the space of 26 hours or more, and before it shall be dried upon the kiln, shall be allowed 10 bushels, and so in proportion for any greater or less quantity. s. 29.

Penalty 100l.

Allowance on wetting.

Every round bushel with a plain bottom, 18 $\frac{1}{2}$ inches wide throughout, and 8 inches deep, shall be deemed a legal *Winchester bushel*. 12 An. st. 1. c. 2. s. 7.

What shall be deemed a bushel.

But if any maltster shall not wet or steep his barley or other corn, in the cistern, uting vat, or other vessel, so as the same be covered with water, and continue so covered for 40 hours before he take or drain the water from it, he shall not be entitled to the said allowance. 33 G. 2. c. 7. s. 64. (see *post* 42 G. 3. c. 38. s. 32.)

No maltster or maker shall wet, water, or sprinkle or suffer, &c. any corn or grain making into malt in any state or stage of operation after the same shall have been emptied out of the cistern, &c. used for steeping, until the full end and expiration of 12 days or 288 hours, on pain of 200l. 48 G. 3. c. 74. s. 13.

Grain making into malt not to be watered until 12 days afterwards.

Penalty 200l.

Penalty on maltster wetting malt after taken from the kiln, 100l.

If any such shall wet, water, sprinkle, or damp, or permit or cause to be wetted, &c. any malt after the same shall have been taken off the kiln and before it shall be delivered into the custody of the brewer or other person who may have purchased or agreed for the same, except in the ordinary process of brewing beer from such malt; he shall forfeit for every such offence 100l. 42 G. 3. c. 38. s. 31.

Penalty on workmen wetting corn contrary hereto.

And by 48 G. 3. c. 74. s. 14. If any workman, servant, labourer, or other person employed by or in the service of any maltster, &c. shall wet, water, or sprinkle any corn or grain making into malt in any state or stage of operation whatever, after the same shall have been emptied, thrown, or taken from or out of the cistern, using fat, or other vessel or utensil used for steeping such corn or grain until the full end and expiration of twelve days or two hundred and eighty-eight hours after the same shall have been emptied, thrown, or taken from or out of any such cistern, &c. used for steeping, &c. as aforesaid, every such workman, &c. so offending, shall be apprehended by any officer of excise, and taken before any one justice of the peace for the county, riding, division, city, or liberty respectively, wherein such workman, &c. shall be found; and any such justice on the party's confession or on proof by one witness may convict in the penalty of fifty pounds every such workman, &c. so proved to have been guilty of any such offence; and every such workman, &c. shall immediately on such conviction pay down into the hands of such officer the said penalty in which he shall be so convicted, to be applied in manner hereinafter directed; and if any such workman, &c. shall not forthwith pay down the said penalty, the said justice shall, by warrant under his hand and seal, commit to the house of correction for the said county, &c., there to be kept to hard labour not exceeding twelve months, to be reckoned from the day of such conviction; and he shall not be discharged until he shall have paid the said penalty, or until the expiration of the time for which such commitment was made.

Maltster may drain water from grain steeping before 40 hours after first wetted.

Provided, &c.

But any maltster or maker of malt may drain the water from any corn or grain, whilst steeping in any cistern or other vessel, before the expiration of forty hours from the time such corn or grain was first wetted and completely covered with water: Provided, that no such water shall be so drained within such time unless the maltster or maker so draining the same shall in their last preceding entry or notice in writing for the making of malt, at the next office of excise, have stated his intention so to drain off such water, with the exact hour and time, between 8 in the morning and 4 in the afternoon, when such water is so to be drained,

nor

nor unless such water shall be drained between the said hours; nor more than once during the said space of forty hours, and that such corn or grain be again completely covered with water within one hour from the time of beginning so to drain. 42 G. 3. c. 38. s. 32.

If any workman, servant, or labourer in the service of any maltster or maker of malt shall begin to wet or steep any corn or grain at any other time than between 8 in the morning and two in the afternoon, or shall at any other time than between 7 in the morning and 4 in the afternoon remove any corn or grain from any cistern or other vessel in which the same shall have been wetted or steeped, or shall wet, water, or sprinkle any corn or grain making into malt, in any state or stage of operation after the same shall have been emptied out of the cistern or other vessel used for steeping until the expiration of 12 days after the same shall have been so emptied, and before the same shall be put or laid on the kiln, every such workman, &c. so offending in any or either of the particulars afore said may be apprehended by any officer of excise, and taken before one justice for the county or division wherein such workman, &c. shall be found; and such justice on the parties' confession, or proof by oath of one credible witness, may convict the offender in the penalty of 50l.; and every such workman, &c. so convicted shall immediately on such conviction pay down into the hands of such officer such penalty; in failure whereof such justice may commit the party so convicted to the house of correction, there to remain to be kept to hard labour for (not exceeding) 12 months, to be reckoned from the day of conviction; and the offender shall not be discharged until he shall have paid the said penalty, or until the expiration of such time of commitment. s. 33. See also 48 G. 3. c. 74. s. 14. (*ante*).

Servants of maltsters beginning to wet or remove grain, &c. contrary to this act, may be fined 50l. by any justice, who may commit him for non-payment.

By 12 An. st. 1. c. 2. s. 4. the officer was empowered to enter, *on request*, the house, &c. of any maker of malt, either for sale or not for sale, and gage all cisterns, &c., and directed to leave a copy of his account of the quantity with the maltster, who was liable to a penalty of 20l. for obstructing him; and by s. 34. the officer on request was permitted by night or by day, *but if in the night* in the presence of a constable, to enter the house, &c. of any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted, such maker refusing to permit him on pain of 20l. And by a general clause in 1 G. st. 2. c. 2. any maker of malt obstructing an officer of excise was liable to a penalty of 10l. s. 4.

Excise officer
may at all times
enter and survey.

Penalty for ob-
structing them
200l.

Manner of
gaging.

Time for mak-
ing.

Dressing of malt.

Mixing bad malt
with good.

But by 42 G. 3. c. 38. It shall be lawful for any officer of excise, as well by night as by day, to enter every malt house or other place used by any maltster or maker of malt for the making or keeping of malt or corn for the making of malt, and to examine, gage, measure, and take account of all corn or grain therein; and if any such maltster or maker of malt shall refuse to permit such officer to enter such place, or if he or any other person shall hinder, impede, or disturb any officer in the execution of his authority relating to the duty on malt, every such maltster or maker of malt, or other person, shall for every such offence forfeit 200l. *f. 34.* See 44 G. 3. c. 74. *f. 24. (post.)*

And if the officer shall refuse or neglect (after demand in writing, 12 G. c. 28. *f. 30.*) to leave a copy of the gage for the maker at the time of taking the gage; he shall forfeit 40s. *f. 31.*

The officer shall measure corn making into malt by the gage only, and not by the bushel. 12 An. st. 1. c. 2. *f. 17.*

No person shall make any barley malt (except in *June, July, and August,*) but that the same shall have in making thereof, that is, in the fat floor steeping and drying three weeks at least, nor in *June, July, and August,* but that it shall have 17 days at the least (unless it be for his own house); on pain of forfeiting for every quarter 2s. half to the king and half to him that shall sue: And the justices in sessions and the steward in the leet may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses. 2 & 3 Ed. 6. c. 10. *f. 2, 3, 4, 5.*

If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20d. half to the king and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. *f. 3, 4.*

No person (except it be for his own-house) shall mingle any malt, not well made, or made of mow-burnt or spired barley with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2s. half to the king and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. *f. 2, 3, 4, 5.*

The bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: And if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. *f. 4.*

And

Penalty for forcing together in the cistern, &c. corn making into malt.

And by 48 G. 3. c. 74. s. 19. If any maltster or maker of malt shall tread, ram, or otherwise force together in the cistern, uting fat, or couch, any corn or grain steeping or steeped in order to the making thereof into malt, every such maltster, &c. shall forfeit 100l. instead of the sum of 5s. for every bushel of corn or grain steeping or steeped, that shall be so trodden, &c. mentioned in the 48 G. 3. c. 2. ; and if any corn or grain in any cistern, uting fat, or couch, steeping or steeped in order to the making thereof into malt, by any maltster, &c. shall be found so hard, close, and compact, as it could not be unless the same had been forced together to prevent the rising and swelling thereof, every maltster, &c. where the same shall be so found, shall in every such case forfeit 100l. ; and if on any supervisor or other officer of excise, or any person employed by any such for that purpose, in the presence of such maltster, &c. or his servant (if such maltster, &c. or servant shall think fit to be present at such operation) throwing or removing the corn or grain from or out of any couch which such supervisor or officer shall suspect to have been trodden, rammed, or otherwise forced together, and returning or throwing such corn or grain back again into the couch, and laying the same level in such couch, any increase shall be found exceeding the rate of one bushel in every twenty above the quantity which the said corn or grain appeared to be by the previous gage thereof taken in the couch before it was thrown out as aforesaid, then, proof being made of such increase as aforesaid, the same shall be deemed conclusive evidence that such maltster or maker of malt did tread, &c. the said corn or grain in the couch, or that the same was so hard, close, and compact, as it could not be unless the same had by some means or other been forced together to prevent the rising and swelling thereof, and shall subject the maltster, &c. to the said penalty of 100l.

Mixing with corn of a former wetting.

No maker of malt shall mix corn or grain making into malt of one wetting with corn of a former wetting ; or mix any of his couches or floors with corn or grain making into malt of a former wetting, before the same is put on the kiln for drying ; on pain of 5s. a bushel. 2 G. 2. c. 1. s. 11.

Mixing malt with unmalted corn.

If any maltster or dealer in malt shall with malt fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or shall ship off or attempt to ship off any such mixture, in order to export the same, he shall forfeit 5s. a bushel. 1 G. 3. c. 2. s. 13.

Mixing malt gaged with malt ungaged.

If any maltster shall fraudulently convey or cause or suffer to be conveyed away from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn or grain making into malt ; and shall mix the same with any couch or floor of other corn, &c. making into malt,

which shall be then depending and in operation, and which shall have been gaged or charged with the duty in the couch, he shall forfeit 200*l.* 1 *G. 3. c. 3. f. 18.* & 48 *G. 3. c. 74. f. 20.*

Concealing malt to avoid the duty.

If any maltster, &c. shall fraudulently conceal any malt or any corn or grain making into malt, from the view of the gager or officer appointed to take an account of the same, or under whose survey such maltster, &c. shall be, he shall forfeit 200*l.* instead of 10*s.* per bushel imposed by 12 *An. 48 G. 3. c. 74. f. 17.*

Conveying away malt to avoid being gaged in the couch.

If any maltster shall fraudulently convey or cause or suffer to be conveyed away from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt, so that no gage thereof can be taken in the couch by the officer; he shall forfeit 200*l.* instead of 100*l.* imposed by 48 *G. 3. c. 2. f. 15.* 1 *G. 3. c. 3. f. 18.* & 48 *G. 3. c. 74. f. 20.*

Penalty for erecting cisterns, &c. without notice.

And by *f. 18.* No maltster, &c. shall erect or set up, alter or enlarge, or use any cistern, uting fat, utensil, or other vessel for the wetting or steeping any barley, or other corn or grain for the making of malt, or of any kiln, floor, room, or other place for the making or keeping of malt, or keeping of corn or grain making into malt, without first giving notice thereof in writing at the next office of excise, on pain to forfeit for every such cistern, &c. so erected, &c. without such notice as aforesaid, 200*l.* in lieu and instead of the sum of 50*l.* mentioned in the 12 *An.*

Entry of malt made.

The maltster shall monthly make entry at the office of excise of all the malt made by him in such month (either for sale or not for sale) in such month; on pain of 100*l.* 12 *An. ff. 1. c. 2. f. 4.* 44 *G. 3. c. 74. f. 16.*

Cisterns.

By the 52 *G. 3. c. 128. f. 1.* Every maltster or maker of malt shall construct every cistern by him intended to be used for the wetting or steeping of corn or grain to be made into malt, in such manner and form that any officer of excise may easily and securely have access to the same, and conveniently gage in any part of two sides of such cistern the corn or grain which shall at any time be therein; and if any such maltster, &c. shall, for the wetting or steeping any such corn or grain, have or use any cistern of greater length or breadth than the length or breadth of nine feet, he shall provide a sufficient ladder of a proper and convenient length and breadth, with a moveable board or plank of a proper and convenient length, breadth, and thickness, to be laid across such cistern, in any part thereof, so as to enable any officer easily and securely to move along and stand thereupon, and to gage in any part of such cistern the corn or grain which shall be therein; and he shall at all times permit any officer to use such ladder and board

board or plank respectively at his will for the purpose aforesaid; and if he shall neglect or refuse to construct any cistern for the wetting or steeping of such corn or grain in such manner and form as aforesaid, or if any maltster, &c. who shall for the wetting or steeping of any corn or grain to be made into malt, have or use any cistern of greater length or breadth than as aforesaid, shall neglect or refuse to provide such ladder and board or plank as aforesaid, or either of them, or shall not suffer any officer to use the same or either of them as aforesaid, in every such case the maltster, &c. so offending shall for every such offence forfeit 200*l.* *s.* 1.

No maltster shall at the same time have or keep in any malt house to him belonging, more than five floors or quantities of malt, or corn or grain making into malt (in the couch or on the floor or kiln, or all or any of them) wetted in or arising from, or pretended to have been wetted in or to have arisen from, or denoted by its place of deposit in such malt house to have been wetted in or to have arisen from one and the same cistern, uting fat, or other vessel or utensil; and if any maltster, &c. shall at the same time have, as in this section as above said, he shall for each and every such offence forfeit 200*l.*: Provided always, that nothing herein-before contained shall extend to subject any maltster, &c. to the said last-mentioned penalty, by reason of his separating or dividing any one or more of his floors or quantities of malt, either into two or more pieces, for the purpose of working such pieces separate and apart from each other, in the same malt house in which such floors or quantities of malt respectively were steeped; nor for any such maltster, &c. separating or dividing the oldest of his floors solely for the purpose of the removal thereof to the kiln for the immediate drying thereof. *s.* 2.

Every maltster, &c. shall put on the floor of his malt house, every of his floors or quantities of corn or grain making into malt, in regular succession one before another according to the seniority of such floors or quantities; and if he shall put them otherwise than in such regular succession, or shall put any such floor or quantity of a less age or later time of taking from the cistern, uting fat, or other vessel or utensil, before, that is to say, more remote from such cistern, &c. than any floor or quantity of a greater age or earlier time of taking from the cistern, &c. then the maltster, &c. so offending, shall for each such offence forfeit 100*l.* *s.* 3.

No maltster, &c. shall empty or take any corn or grain from any cistern, &c. by him used for the wetting or steeping of corn or grain to be made into malt, within 96 hours, to be computed from the last preceding emptying or taking of corn or grain from or out of the said cistern, &c.; nor shall
any

any maltster, &c. within 96 hours, to be computed from the last preceding emptying or taking of corn or grain from any such cistern, &c., empty or take any corn or grain from any other cistern, &c. used as aforesaid, in the same house or building, or under one and the same roof, with such cistern, &c., on pain of forfeiting for each offence 200*l.* *f. 4.*

If any maltster, &c. shall, for the wetting or steeping of corn or grain to be made into malt, employ two or more cisterns, &c. in one and the same house or building, or under one and the same roof, in every such case no such maltster, &c. shall empty or take corn or grain from or out of such cisterns, &c. on different days, or at different times from each other, but shall empty and take all such corn or grain thereout on the same days and at the same hours of the same days respectively: And if any such maltster, &c. shall so empty or take at different times or on different days or at different hours of the same day, then he shall for each such offence forfeit 200*l.*: Provided always, that nothing hereinbefore contained shall extend to subject any maltster, &c. to the last-mentioned penalty, by reason of his emptying or taking corn or grain from any two or more cisterns, &c. at different times of the same day, if the emptying or taking from the last of such two or more cisterns shall have been finished within three hours from the time of beginning the emptying and taking from the cistern, &c. which shall have been first begun to be emptied. *f. 5.*

No maltster, &c. having wetted or begun to wet any corn or grain to be made into malt, shall continue the same or any part thereof in steep, or covered with water, for longer than 55 hours from the time of its being first begun to be wetted; and if having so wetted or begun to wet, he shall so continue for longer than aforesaid; in every such case he shall for every such offence forfeit 200*l.* *f. 6.*

No maltster, &c. shall mix, either in the couch or on the floor or on the kiln, any corn or grain of one wetting or steeping with or amongst any corn or grain of another or different wetting or steeping; and if he shall mix as aforesaid, then in every such case he shall for every such offence forfeit 200*l.* *f. 7.*

If any person shall assault, oppose, molest, obstruct, or hinder any officer of excise in the due execution of this act, or of any of the authorities to him by this act given, the person so offending shall for each such offence forfeit 200*l.* *f. 8.*

All fines, penalties, and forfeitures by this act shall be sued for, recovered, levied, or mitigated by the laws of excise, or by action, &c.; one moiety to his majesty and the other to him who shall inform, discover, or sue for the same. *f. 9.*

By 48 G. 3. c. 74. f. 23. It is enacted that every maltster or maker of malt for sale, shall within the space of 14 days next after he shall or ought to have made such entry as is required and directed by the said act of the 12 *An.* clear of all the duties which shall have been charged upon, and shall remain unpaid by such maltster, &c. in respect of any malt by him made, unless such maltster, &c. shall have given security, approved of by the commissioners of excise, or the person appointed by them, by bond in double the value of the duties which such commissioners or person shall judge likely to arise, be charged on and become due from such maltster, &c. within any five months, for the due payment at the end of every four months from the day on which such maltster, &c. shall or ought to have made such entry as aforesaid, of all such sums of money as shall be charged on and become due from such maltster, &c.; and if any maltster, &c. who shall not have given such security, shall neglect to pay and clear off at the end of such 14 days all such sums as shall be charged on, or become due as aforesaid, every such maltster, &c. shall for every such offence forfeit double the duties.

Preventing the evasion of payment of duty.

After the duty is paid, if any quantity shall be damaged by the casting away, or sinking of the vessel in which any malt shall be transported from one part of the kingdom to another, the justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage, and the allowance to be made in respect thereof, and give a certificate under their hands and seals, of the sum allowed, which shall bear the same proportion to the whole duty as the damage shall bear to the value of the malt before it was damaged; on producing such certificate the officer shall repay or allow to the proprietor the sum certified. 12 *An.* f. 1. c. 2. f. 14.

Drawback of the duty for malt damaged.

But where such loss shall happen, the person who shall sustain the same shall three days before the next sessions leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the next sessions. f. 15.

After the duty is paid, if any malt shall be destroyed or damaged by fire, by burning of the place where it is kept; or shall perish, or be cast away by any inevitable accident to the vessel in which it is transported; the owner may make proof thereof by one or more credible witnesses on oath, and of his having paid the duty at the next quarter sessions either of the county, &c. where it was put on board, or kept at the time of the accident, or of the place next adjoining where such accident shall happen, or before the commissioners of excise, who shall grant a certificate of such loss

Drawback for malt perished,

loss or damage, on producing of which the duty, or proportion thereof, shall be repaid. 9 *G. c. 3. f. 35*. But written notice of such loss and intended application for the allowance must be given six days before such application to the collector of the division, or to the solicitor of excise; and application must be made within one month after the loss or damage, which loss shall not, after being examined, be examined into by any other justices or commissioners. *f. 36, 37*.

Compounding.

By several acts power was given to the officers to compound for the duties upon malt to be consumed in private families at 7s. 6d. a-head by the year; but this having been found to be the occasion of great frauds, this power is abolished by 23 *G. 3. c. 64*.

Making malt for exportation.

No malt entered and made for exportation only shall be liable to the duties; and no drawbacks shall be allowed for any malt exported. 12 *G. c. 4. f. 48*. 33 *G. 2. c. 7. f. 14*.

But the maker shall be allowed for every twenty quarters of grain made into malt for exportation thirty quarters of malt, and no more, on exportation, though by steeping it shall run out into any greater quantity. 1 *G. 3. c. 3. f. 9*. & 44 *G. 3. c. 16. f. 7*.

The maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer of the quantity of corn intended to be contained in each steeping, on pain of 50l.; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5s. a bushel. 12 *G. c. 4. f. 49. 58*.

No maker of malt shall begin to wet or steep any corn to make into malt for exportation above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption above six days before all the corn on his floors for exportation be dried and locked up; on pain of 5s. a bushel. *f. 50*.

The maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting until it hath been measured in presence of the officer, on pain of 50l. 3 *G. 2. c. 7. f. 16*. & 50 *G. 3. c. 1. f. 10*.

The officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gauge and take an account thereof in all its operations, as if case the duties were to be charged thereon. 12 *G. c. 4. f. 52*.

And persons opposing the officers in the execution of this act, shall forfeit 50l. 12 *G. c. 4. f. 58*.

The maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that the officer may attend the measuring; and after it has been measured, it shall (on pain of 50*l.*) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 G. c. 4. *f.* 51. 58. 3 G. 2. c. 7. *f.* 17. 50 G. 3. c. 1. *f.* 11.

Notice of taking malt off the kilns.

Such malt to be exported or stored.

And if he, or any person with his privy, shall open such lock, or make any way or kind of entrance into the place, or carry any of it away, without knowledge or consent of the officer, or notice given to him, he shall forfeit 100*l.* 3 G. 2. c. 7. *f.* 18. 50 G. 3. c. 1. *f.* 12.

When any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed, the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. *f.* 53.

The officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, expressing the quantity, the name of the maker or proprietor, and the place whence delivered, who shall file the same, and make an entry thereof; and if the maker or proprietor shall neglect to deliver such certificate, he shall forfeit 50*l.* *f.* 54.

Persons intending to ship malt for exportation shall give at least 48 hours' notice before they begin to put it on board to the officer of the port, in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5*s.* a bushel. *f.* 57.

If the malt so entered and made for exportation shall not, within nine months next after the making and drying, and carrying into such room, and there locked up as aforesaid, be exported, the proprietor shall for every bushel forfeit 5*s.* *f.* 57.

During the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked

locked from the time the ship shall be fully loaded till it be ready to sail. *f. 56.*

And persons breaking open the hatches of any ship so locked down, shall forfeit 50*l.* *f. 58.*

The officer may not only attend the measuring of such malt, but continue on board the ship till it be cleared of the port. *f. 55.*

And if relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value; one moiety to the king, the other to the informer; and any officer of excise or customs may seize such malt. 1 *G. 3. c. 3. f. 11.* 50 *G. 3. c. 1. f. 9.*

The maker of malt having stock in any store house on the 24th *June* 1804, or who shall use any such store house for keeping of malt for exportation, shall every 15 months after the last clearing clear out the same on pain of 50*l.* 1 *G. 3. c. 3. f. 15, 16.* and 50 *G. 3. c. 1. f. 14.*

If any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5*s.* a bushel. 6 *G. c. 21. f. 4.*

If ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground. 12 *An. st. 1. c. 2. f. 30.*

Power of the
justices.

The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*; and be employed half to the use of the king, and half to him that shall sue. *Id. f. 9.* 24 *G. 2. c. 40. f. 29.* 42 *G. 3. c. 38. f. 36.*

Appeal.

Persons aggrieved by any judgment of the justices on account of forfeitures and offences may appeal to the next quarter sessions, giving six days' notice in writing: but if there be not six days between the order of the justices and the sessions, the appeal may be at the second sessions. 12 *An. st. 1. c. 2. f. 37, 38.* 1 *G. 2. st. 2. c. 16. f. 3.*

But no appeal lies to the sessions against a conviction for a penalty by two justices under the stat. 42 *G. 2. c. 38. f. 30.* for wetting corn in a certain stage of the process of the malting; for though this act refers generally to former excise laws, the clauses in the former acts respecting appeal against the judgment of two justices do not extend to convictions for penalties. *R. v Skone. 6 East's Rep. 514.*]

[This sect. of the act, (*viz.* 42 *G. 3. c. 38. f. 30.*) is repealed by the 46 *G. 3. c. 139. f. 1.*, but it may be useful to state the

(a) For which see *ante*, Sect. III.

following case, viz. of *The King v. Crisp, E. 46 G. 3.* which was also one arising upon the same section of that act. — The defendant had been convicted upon the 42 G. 3. c. 38. s. 30., and the conviction stated, (amongst other things not material in this place,) “ that the defendant *within three months now last past*, at W. *did wet, &c. certain corn*, and “ *grain of him the said S. C. then and there making into malt in a certain state and stage of operation,*” &c.; the conviction after stating the rest of the information, the summons and the appearance of the defendant, and his plea of not guilty, proceeded to state thus, “ and that the said J. F. (the informant) on his oath saith, that he is an officer of excise, and that the said defendant *is a maltster at Wangford* in this county, *and that he*, with the said W. R. *surveyed the malt house of the defendant at W. aforesaid*, on the said 12th of May, *and found a floor of malt in operation very wet*, &c. which had been watered within four days after it had been taken from the cistern.”

It was objected that the evidence did not prove an offence within the statute. The offence is the *wetting, &c. of corn or grain making into malt*, in a state of operation. The evidence is, that the witnesses found a *floor of malt in operation very wet*. — But *corn or grain making into malt*, is not malt; and in s. 31. of the act there is a distinct penalty for wetting malt, before delivery to the brewer; and the duty is on the malt in its finished state; and it ought to have been stated, that it was so wetted before it had been 12 days taken out of the cistern used by him for steeping it. Whereas it might have been in operation for brewing, and taken out of the cistern used by him for brewing. But the court said, that “ *malt in operation*” meant “ *not finished*.” And they added, that if it could be shewn that there was any way in which a *floor of malt* could be *in operation* for any other purpose than that of making malt, a doubt might have been thrown upon it.

Then it was objected that there was no evidence of the defendant's being a maltster; for that a man might have a malt house and not be a maltster; — and that it was not even stated that the malt or cistern belonged to the defendant. Lord Ellenborough Ch. J. said, the witness deposed, that on the 12th of May he surveyed the malt house of the defendant, and found a floor of malt in operation, &c.; it could not be then the defendant's malt house, nor could the officer then have surveyed it, unless the defendant had entered the malt-house as a maltster; it would otherwise have been miscalled the defendant's malt house. The term survey too is used in the malt acts, and I believe that the officer has no authority to survey a malt house, unless it be entered as such. *Grose J.* agreed,

agreed, and *Le Blanc* J. also, who added, that if it were sufficient *primâ facie* evidence from whence the magistrates might collect the fact, it was sufficient to warrant the conviction. *Lawrence* J. doubted. But the conviction was affirmed. 7 E. R. 389.]

Appeal.

By *stat.* 46 G. 3. c. 139. s. 5. After reciting that doubts had arisen whether an appeal lay in certain cases relating to the making of malt or the duties on malt, or any penalty or forfeiture relating to the same, from any judgment, order, or conviction of the justices of the peace to the quarter sessions, it was declared and enacted that persons aggrieved by any such judgments, &c. might appeal to the justices at the next quarter sessions, &c. who were to hear and finally determine concerning the truth of the facts and merits of the case in question between the parties; and who were to amend any defects of form in the proceedings. It took away the *certiorari* from the proceedings at the sessions; and provided that upon every such appeal the justices at the sessions should rehear, re-examine, and re-consider the truth of the facts and the merits of the case, and re-examine upon oath the same witnesses, and no other, who were before examined as witnesses at the original hearing on which the judgment, &c. was given. This act] [viz. 46 G. 3. c. 139.] was continued by the 47 G. 3. s. 2. c. 37. and 48 G. 3. c. 36. to 24th June, 1809.

But the act has not been continued by any subsequent act, and consequently it is unnecessary to recite in this place any of its provisions. Another act, however, of great importance, has been passed, viz. 48 G. 3. c. 74.; into which are introduced (besides certain alterations of the penalties and regulations relating to the making of malt,) several provisions by which maltsters and makers of malt are to ascertain, and make entry of the quantity of *barley* in their possession. And by s. 15. of this last act, the former provisions relative to appeals are rendered more certain. These several sections are as follows:

Maltsters to deliver annually an account of stock of barley.

By 48 G. 3. c. 74. s. 1. It is enacted that every maltster or maker of malt shall, within 10 days after *July* 5th in each year deliver to the officer of excise, under whose survey such maltster, &c. shall then be, a true account of all barley not at the time of such delivery made into malt, or in actual operation for being made into malt, which any such maltster, &c. shall have in his possession, or which shall then be in the possession of any person in trust for such maltster, &c. or for his use; and shall in every such account describe every particular warehouse, storehouse, loft, room, granary, or other place in which any such barley shall be lodged, and the number of bushels contained in each such warehouse, &c. and

and shall, if required, shew to such officer every such warehouse, &c. and all such barley therein; and if he shall refuse to deliver such account, or shall deliver a false account, or shall refuse so to shew any such warehouse, &c. the maltster, &c. so offending, shall for each such offence forfeit 100l.

On penalty of
100l.

By s. 2. Whenever any maltster, &c. shall have finished or dried off all the malt which shall be or shall have been in operation, in any particular malthouse of such maltster, &c. he shall by the space of 24 hours at the least before he shall begin to wet or steep any corn or grain for the purpose of making the same into malt, deliver to the officer, under whose survey he shall then be, a particular account of all the barley which he shall at the time of such delivery have in his possession, or which shall then be in the possession of any person in trust for him or for his use; and every such maltster, &c. shall in every such account describe every particular warehouse, &c. (*as before*) in which any such barley shall be lodged, and the number of bushels of such barley contained in each such warehouse, &c.; and if he shall refuse to give such account, or shall give a false account, he shall for each such offence forfeit 50l.: Provided that nothing in this act contained shall extend to any barley in the straw unthreshed, provided that the maltster, &c. who shall be possessed thereof, shall enter in such book as is hereinafter mentioned the grain arising from the threshing, and which shall be removed out of the place in which the same shall be threshed or separated from the straw (except to the house, place, or premises of some person to whom the same shall be disposed of) as barley brought in or received by such maltster, &c.

Maltster to deliver an account before he begins to work, on penalty of 50l.

Account of grain to be entered when threshed, and removed to the entered store.

s. 3. Every maltster, &c. shall keep a book, to be delivered to him by the proper officer of excise, which book shall be prepared with proper and distinct columns for entering accounts of all the barley received into his possession; and shall enter in such book the total quantity contained in the particular accounts directed by this act to be given to the officer on the day on which any such account shall be respectively so given, on pain of forfeiting for every neglect or refusal 50l.

Barley declared as in stock to be entered in a book to be kept by maltsters, on penalty of 50l.

s. 4. Every maltster, &c. shall on the same day on which he shall receive any barley into his possession, write and enter in such book, and in the proper columns, a particular account of the number of bushels which he shall receive into his possession, or which shall be received into the possession of any other in trust or for the use of him, and also the christian and surname, and place of abode of the person of whom purchased, or from whom received, and also an account of the quantity in bushels, which shall at any time be wetted or put into steep for the purpose of making the same

All barley received to be entered in a book.

into malt, and also opposite to every such quantity so wetted or put into steep the particular day and hour of the day on and at which such barley was so wetted or put into steep; and every maltster, &c. who may be desirous to sell, remove, or otherwise dispose of any barley, or screenings of barley, not to be by himself made into malt shall write, and on the same day in which the same shall be sold, consumed, sent out, delivered, or otherwise disposed of, enter a particular account of the number of bushels sold, &c. in any quantity exceeding one bushel, and the name and place of residence of the person to whom sold or delivered, and shall every day write and enter as aforesaid, an account of the gross quantity so sold, &c. in the preceding day in quantities not exceeding one bushel, not for the purpose of being by himself made into malt; and if any maltster, &c. shall neglect to make such entry he shall for each such offence forfeit 100l.: Provided that no maltster, &c. shall be subject to the said last-mentioned penalty by reason of his not writing or entering the christian or surname, or place of abode of the person from whom any barley unthreshed was purchased or received.

Penalty for neglect 100l.

Books to be open to inspection of officers.

And by §. 5. Every such book shall at all times be produced to and left open to the free inspection of the proper officer, who shall be permitted to examine and cast up, and make copies or extracts from the entries contained therein, and to insert the time of such inspection or examination, and sign his name thereto.

Barley or malt lodged in different premises may be kept by the officers as distinct stocks.

By §. 6. If any maltster, &c. shall lodge any barley or malt in different warehouses, storehouses, lofts, rooms, granaries, or other places, not under the same roof, or which shall be separated from each other in any wise howsoever, the stock of such barley or malt shall, if the supervisor under whose survey such stock shall be shall deem it expedient, be deemed to be distinct stocks; and be surveyed and kept account of by the officer accordingly, as if the same belonged to different persons.

Barley to be laid regularly and even, to enable the officers to gauge the same.

Excess upon casting up and balancing stock to be considered as not entered.

By §. 7. Every maltster, &c. shall so often as he shall be required by any officer cast or place all the barley in his possession, not in an actual state of operation for being made into malt, into such regular form as may enable the officer conveniently to gauge and ascertain the true quantity; and if the quantity of barley not in actual operation for making into malt, shall be found to exceed the quantity which any such maltster, &c. ought to have in his possession, according to the true result drawn from adjusting such book as aforesaid, in the proportion one bushel in every 20 bushels of barley, every such maltster, &c. shall be adjudged to have received barley into his possession, and to have neglected to make

make such entry in the said book as by this act is required ; and if any maltster, &c. having been thereunto required shall neglect to place any such barley into such regular form, he shall for each such offence forfeit 100l.

And by *f. 8.* If any officer, upon gauging and taking such account as aforesaid, of the quantity of barley not in actual operation for making into malt, shall find the quantity less than the quantity which it ought to be, according to the true result drawn from adjusting such book as aforesaid, and the entries therein, in the proportion of one bushel in every 20 bushels of barley of the quantity received, the maltster, &c. shall be adjudged to have wetted and steeped barley for the purpose of making the same into malt, and neglected to make such entry in such books as is by this act in that behalf required ; and every such maltster, &c. shall in every such case, over and above the penalty by this act imposed for the neglect or refusal to make such entry be charged with the duty chargeable for every bushel so found deficient, to be sued for, &c. by such ways and under such penalties as the duty on malt may be sued for, &c. by laws relating to the duties of excise.

Deficiency upon balancing does, to be charged with duty.

By *f. 9.* Every maltster, &c. shall, before the officers take any such account as aforesaid, be required by the proper officer, and permitted to make due entries in such book of all barley, or screenings of barley, which he may have received into his possession, or have wetted or put into steep, or have otherwise disposed of in the course of the day in which such account is proposed to be taken, or of the day preceding ; and if any dispute shall arise respecting the true quantity so taken account of, such maltster, &c. shall be allowed immediately and with all due diligence to measure the same in the presence of such officer by a just *Winchester* bushel measure of the dimensions prescribed by law, to be provided by such maltster or maker of malt ; and the quantity ascertained by such admeasurement shall be taken to be the true quantity in the possession of such maltster, &c.

Book to be filled up before call up by officer.

Maltster may require stock of barley to be measured, if he disputes the accuracy of officer's gauge.

By *f. 10.* If any maltster, &c. shall purchase or receive, or send out barley by any measure other than the *Winchester* bushel, he shall enter the quantity in such book as aforesaid, either according to the just number of *Winchester* bushels, which such barley will fairly measure, or shall specify in such book against each quantity entered therein, the exact measure in which he shall enter ; that is to say, whether the quantity is in bushels of eight gallons, eight gallons and a quarter, eight gallons and a half, eight gallons and three-quarters, or nine gallons, or any and what other measure ; and in every such case the proper officer on adjusting the stock, shall reduce the whole quantity to *Winchester* bushels.

To be entered according to *Winchester* bushel, or otherwise the measure to be described.

Justices may
summon evi-
dence.

By *f. 11.* Any justice of the peace before whom any information shall be exhibited against any maltster, &c. for any offence against the laws of excise respecting the duties on malt, may summon any farmer, maltster, or dealer in or seller of barley or malt; or other person, and examine such person upon oath, touching the sale or delivery, or the purchase or receipt of any barley sold, sent out, delivered, or received by any such farmer, &c. except as to the price or value, and if any farmer, &c. shall not obey such summons, or give evidence when thereunto required, he shall for each such offence forfeit 5*l.*

In cases of pro-
secutions for
deficiency or
excess in the
quantity of bar-
ley, defendants
may prove that
it was not
occasioned by
fraud.

And by *f. 12.* In all cases of prosecutions or informations under this act for the recovery of any duty, fine, or penalty, for or on account of any deficiency or excess in the quantity or stock of barley in the possession of any maltster, &c. it shall be lawful for the defendant to produce any witnesses competent to prove that the deficiency was actually and *bonâ fide* caused by barley having been stolen or privately conveyed away without the privity or consent of such defendant, by unintentional error in entering and keeping the accounts of barley by this act required, without any design of fraud; and if the justices or the court and jury before whom any such information shall be heard and tried, shall be satisfied by the evidence of one witness that there was not any design of fraud, they may acquit the defendant.

Persons ag-
grieved in cases
relating to the
making of malt
may appeal to
the quarter
sessions.

By *f. 15.* reciting that whereas doubts had arisen whether any appeal lay, in certain cases, concerning the making of malt, or the duties on malt, or any penalty or forfeiture relating to the same, from any judgment, order, or determination, or any conviction of justices to the justices assembled at the quarter sessions of the peace; for obviating such doubts, it is enacted, that it shall be lawful for any person who shall find himself aggrieved by any judgment, order, determination, or conviction of any justice of the peace, in any case concerning the making of malt, or any of the duties on malt, or any penalty or forfeiture relating to the same, to appeal from such judgment, &c. to the justices assembled at the next general quarter sessions of the peace to be holden for the county, riding, shire, stewartry, city, or place in which such judgment shall have been given, or order, &c. made; which said justices, or the major part of them so assembled, are thereby empowered to hear and finally determine, concerning the truth of the facts and merits of the case in question between the parties, to such judgment, &c. respectively; and if at such quarter sessions any defects of form shall be found in such proceedings before the justice who gave such original judgment, &c. such defects shall or may be rectified and amended by the order

or orders of such justices, or the major part of them so assembled, any thing therein or in any other act or acts contained to the contrary in anywise notwithstanding; and no writ of *certiorari* shall be allowed to set aside any determination or order of the said justices, or the major part of them so assembled: Provided always, that upon every such appeal the said justices so assembled at such quarter sessions, shall and do proceed to re-hear, re-examine, and re-consider the truth of the facts and the merits of the case in question between the parties to such original judgment, &c., and to re-examine th-reto upon oath the same witnesses, or any of them, and no other, who shall have been before examined upon oath as witnesses before the justice or justices of the peace at the original hearing on which the judgment, &c. so appealed from, was given or made.

And by the *f. 21.* the said several penalties by this act imposed in lieu of the said lesser penalties respectively, hereinbefore mentioned, shall be made perpetual. Increased penalties made perpetual.

And by *f. 22.* every conviction by or before any justices of the peace for any fine, penalty, or forfeiture, fines, penalties, or forfeitures, by this or any other act of parliament relating to the duties of excise on malt imposed, may be made in the form following; to wit, Form of conviction.

BE it remembered, that on the ——— day of ——— in the year of our Lord ——— A. B. was, on the complaint of C. D. he the said C. D. then and there being an officer of excise, convicted before us, two of the justices of the peace for the county of ——— [or, for the riding or division of the county of ——— or for the city, liberty, district, or town of ——— as the case shall happen to be] in the penalty of ——— in pursuance of an act made in the ——— year of the reign of king George the third, for ——— [as the case may be]. Given under our hands and seals the day and year first above written.

And by *f. 24.* if any person shall molest any officer in the execution of this act, or of any of the powers to him by this act given, the person so offending shall for each such offence forfeit 100*l.* Penalty on obstructing officers.

By 48 G. 3. c. 74. *f. 25.* & 26. all fines, &c. by the 48 G. 3. c. 74. imposed, to be sued for, &c. as any fine, &c. may be by any law of excise, or by action, &c., one moiety to his majesty, the other to him who shall inform, discover, or sue for the same. Recovery of fines and penalties.

And by *f. 26.* the provisions of other acts shall be put in execution for the purposes of this act, as if re-enacted in this act. Extending provisions of former acts.

The sessions may award costs to either party, to be levied by warrant of the justices or two of them on the goods of the party. 12 *Ann. st. 1. c. 2. f. 38.*

Certiorari.

No *certiorari* shall be allowed, to set aside any order of the justices. *f. 37.*

Malt liable to the duties and penalties.

And all malt in custody of the maker shall be liable to the duties and penalties in the same manner as if he were the lawful owner. *Id. f. 10. 28 G. 3. c. 37. f. 21.*

MUM. See EXCISE. (*Alc.*)

Sect. V. (II.) *Paper.*

[10 *Ann. c. 29. f. 40. 43. 50. 55. — 1 G. st. 2. c. 36. f. 17, 18. — 11 G. c. 7. f. 10 — 24 G. 3. c. 41. f. 2. f. 1. 7, 8. — 26 G. 3. c. 77. f. 5. — c. 78. f. 2, 3. 5. 9 — 20. — 28 G. 3. c. 37. f. 21. — 32 G. 3. c. 54. f. 1 — 6. — 34 G. 3. c. 20. f. 5. 7 — 37. 39 — 42. 47 — 50. 52. 57. — 41 G. 3. U.K. c. 8. f. 6, 7. — 42 G. 3. c. 94. f. 6. 10 — 17. — 43 G. 3. c. 69. — 46 G. 3. c. 112. f. 2. — 47 G. 3. f. 2. c. 30. f. 13. — 49 G. 3. c. 81. f. 1. — c. 98.]*

Exportation.

Paper which hath paid the duty may be exported, and also books; and drawbacks are to be allowed, subject to the regulations in this and former acts relating to the exportation of paper. 23 *G. 3. c. 78. f. 19. 34 G. 3. c. 20. f. 28, 29, 30, 31, 32, 33, 34. 43 G. 3. c. 69. Sched. (G.)*

The officer, who shall attend to see the same packed in order to be exported, shall take off the stamps from each ream or bundle; and if any person shall obstruct him herein, he shall forfeit 50*l.* 26 *G. 3. c. 77. f. 5.*

[By the 43 *G. 3. c. 69. Sched. (A.) (B.)* Certain excise duties were imposed upon papers of different kinds, not being sheathing paper, or button papers or button board; and by the 47 *G. 3. f. 2. c. 30.* this exception is repealed, and they are made subject to the same duties as millboard, and subject to the same regulations, &c. as other exciseable commodities. And these several duties upon paper are to be under the management of the commissioners of excise.]

[By the 49 *G. 3. c. 98.* Certain duties of customs are also payable upon papers.]

But old rags, old ropes, or junks, or old fishing-nets, may be imported duty free. 11 *G. c. 7. f. 10.*

Importing
printed, painted,
or stained paper.

By 32 *G. 3. c. 54.* The officers of the customs, where any printed, painted, or stained paper shall be imported, shall cause the same to be marked, and the commissioners shall provide proper frames and stamps, and such numbers or marks as they shall think fit to denote the measure; which officers are required to measure every such piece of paper, and to mark

mark the same with such frame mark, and stamp as follows:— every piece of less than half a yard in length to be marked and stamped at one end only; and every piece of half a yard in length or upwards to be marked and stamped at both ends of such piece; which frames, &c. may be from time to time altered as the commissioners shall think fit. And if any person shall counterfeit or forge any frame, number, or mark, or the impression of the same, upon any such paper, he shall forfeit 100l.; or shall counterfeit or forge, or resemble any stamp or seal so provided, or counterfeit or resemble the impression of the same, thereby to defraud his majesty, he shall forfeit 500l.: And if any person shall sell any printed, painted, or stained paper with such counterfeit stamp, knowing the same, he shall forfeit 50l. *f. 1.*

If any person shall wilfully cut out, obliterate, or deface any such frame-mark, number, or mark, or suffer the same to be done, he shall forfeit 50l. for every piece so cut, &c. *f. 2.*

If any person shall fraudulently affix upon any such piece of paper any frame-mark, or stamp, or seal which hath been before used, he shall forfeit 50l. and also every such piece of paper. *f. 3.*

If any person shall make oath before two commissioners within their limits, or elsewhere, before one justice, that he hath reason to suspect that any foreign imported printed, painted, or stained paper, for which a duty ought to have been paid, is, or shall be in the custody of any printer, painter, or stainer of paper, or person dealing therein, or other person for his use, without having such stamps or seals as aforesaid, they may authorize any officer of the customs or excise, with the assistance of a constable, in the day time, to search for the same, and to open doors, chests, trunks, and packages, and the paper so found unstamped shall be forfeited, and may be seized by any officer of the customs or excise. Provided always, that no remnant or piece of such paper, being of less length than shall be expressed by such frame mark so found, having such stamp or seal as aforesaid at one end thereof, shall be forfeited, by reason of not having such stamp or seal at both ends thereof: And if any person shall obstruct any of the said officers in the execution of their duty herein, he shall forfeit 50l. *f. 4.*

To prevent frauds in adding to any piece or remnant of such paper, after the same hath been stamped or sealed, and also to prevent the importation of any such paper without being stamped or sealed as aforesaid; if any piece or remnant of such foreign imported paper, not having such frame-mark and stamp thereon as aforesaid, (or having the same at one end, or both ends thereof, and being of a greater length

by half a yard or more than by such mark is expressed,) shall be found in the possession of any printer, painter, or stainer of paper, or dealer therein, the same shall be forfeited, and may be seized in manner aforesaid; and the person in whose possession the same shall be found shall also forfeit 50*l.* §.5.

All penalties and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated, as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him who shall sue. §.6.

Importing books for sale first printed in this kingdom and re-printed in any other.

And by 34 *G. 3. c. 20.* If any person shall import for sale any books first composed, written, or printed, and published in this kingdom, and re-printed in any other country; or shall knowingly sell, publish, expose to sale, or have in his possession for sale any such book; the same shall be forfeited and also 10*l.*, and double the value of each copy of such book, which may be seized by any officer of the excise and customs, and the same shall be forthwith made waste-paper; and the commissioners of customs or excise shall reward their respective officers who shall make such seizure with a sum not exceeding the value of the books. §. 57.

Provided that this shall not extend to any book that has not been printed or re-printed in this kingdom within 20 years before the same shall be imported, nor to any book re-printed abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written abroad. *Id.*

License.

Every *maker* of paper or pasteboard, and every *paper-stainer*, shall take out a license from the office of excise, for which he shall pay 2*l.* and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 20*l.* 24 *G. 3. c. 41. sess. 2. §. 1. 7.* 43 *G. 3. c. 69. Sched. (A.)*

Persons in partnership.

But persons in partnership need not have more than one license for one house. 24 *G. 3. c. 41. sess. 2. §. 8.*

Two classes of paper.

All brown paper made of old ropes or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, shall be deemed and taken to be paper of the second class or denomination, and shall be charged with the duty accordingly; and all other paper whatever (glazed paper for clothiers and hot pressers excepted) shall be deemed and taken to be of the first class or denomination, and chargeable accordingly. 42 *G. 3. c. 94. §. 10.*

No paper to be painted for hangings, but of the first class.

No person shall print, paint, or stain any paper to serve for hangings or other uses, except such in respect whereof the duty chargeable on paper of the first class hath been charged, nor unless such paper have been previously produced to the officer, inclosed in the original wrapper in which it

was charged, and with the impresson of the stamp denoting such charge, and the name of the officer and date of the charge, and the class of such paper marked and remaining visibly thereon; and such printer, painter, or stainer, shall open every ream and bundle of such paper in the presence of such officer, who shall thereupon take an account of the quantities and dimensions thereof, and stamp the same according to law. 41 G. 3. U. K. c. 8. s. 6.

If any maker shall cut or diminish any paper before the same shall be taken account of, weighed, and charged, he shall forfeit 50l. and also such paper; which shall also be seized. s. 7.

Maker not to diminish paper before it be charged.

No pasteboard shall be made of any material except paper which has been charged with the full duties of excise, and has not been used for any purpose, on pain of forfeiture of the paste-board and all implements, utensils, materials, and preparations used in making such pasteboard (all which shall also be seizable), and also of 100l. 42 G. 3. c. 94. s. 11.

Pasteboard to be made of paper charged, and unused, on pain of 100l.

Before any maker shall begin to make any paper into pasteboard, he shall produce to the officers all such paper as he shall intend to make into pasteboard in the original wrappers in which the same was charged, and having the excise duty stamp legible on each ream thereof, and shall take the said wrappers from the said paper in presence of such officer, who shall take account of such paper, its quantity and weight, and destroy such duty stamp; and that such officer may be enabled to take such account, every such maker of pasteboard shall give 24 hours' notice in writing of his intention to produce such paper, and shall specify the quantity thereof, and the day and hour when he intends to produce the same; and for neglect of giving such notice, or using any paper for pasteboard before producing the same, and such account being taken, such maker of pasteboard shall for every offence forfeit 100l. s. 12.

Makers thereof to produce the paper, &c. on pain of 100l.

No maker of pasteboard shall carry on the business of a maker of paper; nor shall any maker of pasteboard set up or carry on the business of making pasteboard within one quarter of a mile of any mill or manufactory for the making of paper, on pain of 100l. s. 13.

No maker of pasteboard shall be a paper maker; nor manufacture within $\frac{1}{4}$ of a mile, on pain of 100l. Places of making or keeping to be entered.

And every maker of paper, pasteboard, millboard, scale-board, or glazed paper, before he shall begin, shall make entry in writing at the next excise office of every mill, work-house, and other place by him intended to be used for making, drying, or keeping paper, &c. or materials proper to be made into paper, &c.; and of all vats, presses, utensils, and vessels intended to be used in making the same; on pain of forfeiture thereof, and also 50l. 34 G. 3. c. 20. s. 5.

All

Paper, pasteboard, &c. to be made up as herein directed.

All paper, pasteboard, millboard, scaleboard, and glazed paper, made in *Great Britain* or in *Ireland* and imported from thence, shall be made up by the maker thereof in this manner, (that is to say,) all such paper, as soon as made, shall be made up into quires, each quire to consist of 24 sheets, and such quires shall be forthwith made up into reams of 20 quires each; and all such pasteboard, millboard, scaleboard, and glazed paper respectively, shall when made be forthwith made up in regular parcels, each parcel containing even dozens of sheets of one and the same denomination and of equal dimensions, and not less than 24 nor more than 72 such sheets in each parcel; and every maker shall by himself or servant cause all such paper, pasteboard, &c. to be immediately tied up in wrappers conformably to the directions of 34 G. 3. c. 20. s. 7., &c. [see *infra* ;] and shall without delay mark on each wrapper in large legible characters and words at length the class of the paper enclosed, distinguishing in which of the two classes the duty in respect of such paper is chargeable, together with the number of the ream according to the number of such reams of each such class, made by such maker at such mill during the current quarter, to be computed from *January 5. April 5. July 5. and October 10.* as the case may require, in such year, such number to be taken progressively, beginning 1, 2. and so onwards, according to the number of reams of each class made at such mill in each such quarter; and on each such parcel of pasteboard, &c. there shall in like manner as soon as tied up as before directed, be marked in like manner the true description of such parcel, and whether the same be pasteboard, millboard, scaleboard, or glazed paper, and the number of sheets in each parcel, together with the progressive number of such parcel of pasteboard, &c. made by such maker at his mill or manufacture during the then current quarter commencing as aforesaid; and if any maker of paper, pasteboard, &c. shall neglect or refuse so to make and tie up, and denominate for 24 hours after such paper, pasteboard, &c. shall be made; or after the same is tied up and marked, and before it is charged, shall untie or take the same out of the wrapper, or otherwise alter any reams or parcels, or the denominations or numbers marked thereon or on the wrappers; or shall conceal or remove any such paper, pasteboard, &c. from the mill room or other place entered for making, laying, or keeping the same; every such maker shall for each offence forfeit 200l., together with all such paper, pasteboard, &c. which shall be seizable: Provided, that every maker may make his paper into quires without folding the same, such quires, when made up into reams, being separated by a slip of coloured paper placed between each quire, and visible on the outside of the ream; and provided also, that

On penalty of 200l. and forfeiture of the paper, &c.

Paper may be made into quires, &c.

that the outside quires of each ream consist of not less than
 o nor more than 24 sheets, at the option of the maker.
 2 G. 3. c. 94. s. 15.

Paper may be
 cut as herein
 directed.

Any maker of paper may divide with a knife or other in-
 strument, before such paper shall be put up in reams, pro-
 vided, that the quantity upon which the duty is chargeable
 be not diminished thereby, and that all paper so divided,
 shall on the outside of the wrapper be distinguished by the
 words, "*cut paper*," being marked thereon in large legible
 characters by the maker. s. 16.

Outside quires.

Every maker of paper, pasteboard, &c. whose mill or work-
 house is situate in any city or market town, who shall have any
 paper, &c. to be weighed and charged with the duty, shall
 give twenty-four hours' (elsewhere forty-eight hours') pre-
 vious notice in writing of the time and hour of day to the of-
 ficer of excise, who shall attend; and such maker or his ser-
 vant shall produce to such officer so soon as he shall attend
 the whole thereof tied up in the manner following, (viz.) all
 such paper shall be inclosed and tied up with strong thread
 or string in covers, containing one ream or bundle each, and
 not more or less; and all such pasteboard, millboard, scale-
 board, and glazed paper shall be tied up with strong thread
 or string in such parcels as aforesaid; and the different parts
 of such thread or string shall pass over and cross each other
 at the middle of the ream or bundle; and where the differ-
 ent parts of such string shall cross each other, the same shall
 be passed from thence over and across the ends and sides of
 such ream or bundle; and if such maker shall not at the
 time and hour mentioned in such notice produce to such of-
 ficer all the paper, pasteboard, &c. for which any duty is to
 be charged tied up, and the proper class and other matters
 before described (42 G. 3. c. 94. s. 15.) marked thereon,
 such notice shall be void, and he shall be obliged to give a
 fresh and like notice before any account shall be taken or the
 duty charged, and before he shall remove the same from the
 mill where made. 34 G. 3. c. 20. s. 7.

Notice of
 weighing.

Paper, &c. how
 to be tied up.

The commissioners of excise shall provide stamps, devices,
 or labels. And if any person shall counterfeit or cause to
 be counterfeited any such stamps, &c. or shall counterfeit,
 forge, or resemble, or cause the mark or impression thereof,
 upon any cover or wrapper of any label affixed to any quan-
 tity of paper, or upon any pasteboard, &c. thereby to de-
 fraud his majesty, or shall knowingly have in his possession
 any counterfeit stamp or device, or shall sell any paper with
 a counterfeit or forged mark or impression of any such
 stamp or device thereon, knowing the same; or shall put
 any cover upon any such ream, bundle, or quantity which
 has not been duly entered, or shall use any cover or wrapper
 which

Stamps to be
 provided, and
 penalty of coun-
 terfeiting the
 same, or selling
 with forged
 stamps.

which has been used before; or shall knowingly affix, tie up, put, place, or add any pasteboard, &c. having thereon the impression of any such stamp or device, or any label, whether true or counterfeit to any pasteboard, &c., which has not been duly entered and charged, then, in every such case, every such offender shall forfeit 500*l.* *f.* 8, 9.

By the 46*G.3. c.112. f.2., f.9.* of 34*G.3. c.20.* is repealed (as to the penalty upon the matters relating to counterfeits), and in lieu of such penalty it is enacted, that the person therein offending shall suffer death as a felon, without benefit of clergy.

But by the 47*G.3. sess.2. c.30. f.12.* This is again repealed and by the 47*G.3. sess.2. c.30. f.13.* the 34*G.3. c.20. f.9* imposing the penalty for counterfeiting (as above mentioned) is repealed; and it is enacted that every person guilty of counterfeiting or causing to be counterfeited any such stamp, device, or label, provided or directed to be used in pursuance of the 34*G.3. c.20.* shall be adjudged guilty of felony, and for such offence shall be transported as a felon for seven years.

For forging
stamps on paper,
&c.

By the 52*G.3. c.143. f.7.* If any person shall, after the passing of this act, forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, die, or plate, which in pursuance of any act or acts of parliament shall have been provided, made, or used by or under the direction of the commissioners appointed to manage the duties on stamped vellum, parchment, and paper, or by or under the direction of any other person or persons legally authorized in that behalf for expressing or denoting any duty or duties, or any part thereof, which shall be under the care and management of the said commissioners, or for denoting or testifying the payment of any such duty or duties, or any part thereof, or for denoting any device appointed by the said commissioners for the ace of spades, to be used with any playing cards; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, the impression, or any resemblance of the impression, of any such mark, &c. &c. as aforesaid, upon any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material; or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material with any such forged or counterfeited mark, &c. &c. as aforesaid, with intent to defraud his majesty, his heirs or successors, of any of the duties, or any part of the duties under the care and management of the said commissioners, or if any person shall utter or sell, or expose to sale, any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material having thereupon the impression of any such forged or

forge

forged or counterfeited mark, &c. &c. or any such forged or counterfeited impression as aforesaid, knowing the same respectively to be forged or counterfeited; or if any person shall privately or secretly use any such mark, &c. &c., which shall have been so provided, made, or used by or under such direction as aforesaid, with intent to defraud his majesty, his heirs or successors, of any of the duties, or any part of the duties under the care and management of the said commissioners; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

By §. 9. If any person (not being lawfully appointed or authorized so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being so appointed or authorized as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse (the proof whereof shall lie on the person accused,) any frame, mould, or instrument, for the making of paper, with the words 'excise office' visible in the substance of such paper, or shall make, or cause or procure to be made, or knowingly aid or assist in the making any paper, in the substance of which the words 'excise office' shall be visible; or if any person (except as before excepted) shall by any art, mystery, or contrivance, cause or procure the said words 'excise office' to appear visible in the substance of any paper whatever; or if any person (not being so appointed or authorized as aforesaid,) shall engrave, cast, cut, or make, or shall cause or procure to be engraven, &c. any mark, stamp, or device, in imitation of, or to resemble any mark, stamp, or device made or used by the direction of the commissioners of excise in *England* or *Scotland*, or the major part of them respectively, for the purpose of printing, stamping, or marking of any paper to be used as or for a permit or permits, to accompany any exciseable commodity or commodities removing or removed from one part of *Great Britain* to any other part thereof, in pursuance of the directions of any of the several statutes requiring such permit; he shall on conviction thereof be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Punishment for making frames used in the making of paper.

By the 49 G. 3. c. 81. §. 1. It is further enacted, that if any person shall upon any cover or wrapper of any label affixed to any quantity of paper, or upon any pasteboard, millboard, scaleboard, or glazed paper, counterfeit, forge, or resemble the mark or impression of any stamp or device, provided or directed to be used in pursuance of the 34 G. 3. c. 20. or shall have such in his possession knowing the same to be counterfeit, or shall have in his possession, or shall utter or sell any paper with a counterfeit mark or impression

Forging stamps upon wrappers.

of

of any such stamp or device on the cover or wrapper, or on any label affixed thereto, or any pasteboard, millboard, scaleboard, or glazed paper, with a counterfeit mark or impression of any such stamp, &c. on such pasteboard, &c. or upon any label affixed thereto, knowing the same to be so counterfeited, or shall upon any quantity of paper which has not been duly entered, and charged with the excise, knowingly put any cover or wrapper having thereon such counterfeit mark or impression, or any such counterfeit label, every person in either of the said cases offending, shall, in lieu of the said penalty of 500*l.* (in 34 G. 3. c. 20.) be transported as a felon for seven years.

Directions for
stamping paper.

As soon as such officer is satisfied that the conditions in this act specified have been complied with, he shall stamp or mark every ream and bundle of paper, and parcel of pasteboard, &c. to denote the duty, or shall affix on every such bundle or parcel a proper label, to denote the duty being so charged, and shall write his name upon each, together with the date, day, and year, on which the duty was charged. And if any person shall wilfully deface, obliterate, or alter the same, or any part thereof, or any impression of any such stamp or mark, he shall forfeit 50*l.* for every such offence, 34 G. 3. c. 20. *f.* 10.

Defacing marks.

Officers may
take samples.

Any officer may open any such ream or bundle of paper, and take out a sample not exceeding one sheet out of each quire (paying the market price for the same if demanded;) and if he shall discover therein any paper of a different class than that which shall be denominated on the cover, the same shall be forfeited and may be seized; and the person who shall have marked any such false class shall forfeit 50*l.* for every such offence. *f.* 11.

Entries to be
made every six
weeks.

Every such maker shall once in every six weeks make entry in writing at the excise office, which entry shall contain the quantity of paper, &c. made within six weeks; and also the classes of all such according to the four classes aforesaid; and the number of reams and bundles of paper, and the weights; the reams and bundles of paper of each such class, and also the number of parcels, and the quantity and weight of such pasteboard, millboard, scaleboard, and glazed paper, on pain of 50*l.*; which entries shall be verified upon oath (to be administered by the officers of excise without fee) by the maker or his chief workman or servant employed in making the same: Provided that no such maker shall be obliged to go further than the next market town for the making of such entry. *f.* 12.

And duties to be
paid.

And every maker shall, within six weeks after he shall make or ought to have made such entry, pay the duties, on pain of forfeiting double duty. *f.* 13.

No

No maker shall remove or suffer to be removed from the mill where the same shall be made, any paper, &c. until such officer shall have taken an account thereof; nor shall remove any paper in any less quantity than a ream or bundle, nor without having thereon the cover in which the same was charged with the duty; nor shall remove any such pasteboard, millboard, scaleboard, or glazed paper, in any less quantity than the entire parcel in which the duty was charged, nor until weighed and charged, and stamped, marked, or labelled as aforesaid, nor the paper without having thereon the cover, nor the paper, pasteboard, &c. without the stamp or label, nor without the officer's name, together with the day and year when the duty was charged, and the several matters hereinbefore prescribed, marked, or fixed on such cover, or on such pasteboard, &c. on pain of forfeiting the same, and also 50*l.* for every such offence, together with the package containing the same, and the horses, cattle, carriages, boats, barges, or other vessels used in removing thereof, which may be seized by any officer of excise. 34 G. 3. c. 20. s. 14. 42 G. 3. c. 94. s. 15.

Paper not to be removed until an account be taken.

No maker shall remove any paper, &c. from the place where the same shall have been weighed, and the duty charged, in less than 24 hours; and shall keep such as have been weighed separate from other paper, &c. for 24 hours, unless sooner re-weighed by the surveyor or supervisor, to the end that the same may be re-weighed by such surveyor or supervisor after such officer; and if, upon re-weighing, any additional weight shall be found, the same shall be charged with the duty according to such last-mentioned weight; and if any such maker shall offend herein, he shall forfeit 50*l.* for every such offence. 34 G. 3. c. 20. s. 15.

When to be removed after weighing, and to be kept separate.

Provided nevertheless, that nothing herein shall extend to prevent any maker from sending paper from the mill where made, upon giving 48 hours' notice in writing to the officer, to any other mill to be sized or finished, in order that such officer may attend and take an account thereof; and provided that the same be removed with a proper certificate from such officer; and that when so removed to such mill, the same shall be under the like directions, as to stamping and other matters, as if it had been finished and sized at the mill where made; and such maker shall, for the breach of any of the directions aforesaid, be subject to the like penalty, as he would have been, if such paper had not been removed. s. 16.

May be removed from one mill to another on giving notice.

Every maker shall keep all paper which hath been charged and stamped, marked or labelled, apart from all paper which hath not been charged and stamped, marked or labelled, and

Paper stamped to be kept separate.

also all paper of one class separate from paper of another class; on pain of forfeiting 50*l.* for every such offence. *f.*17.

Officers may
enter and take
an account.

Any officer of excise may, by day or night, (but if in the night then in the presence of a constable,) enter into any mill, workhouse, or other place entered or made use of by any maker of paper, &c. for making, keeping, or drying paper, &c. or materials proper to be made into paper, &c. and by weighing tale or otherwise may take an account of the kinds and quantities of paper, &c. which shall have been made, and shall make a report thereof in writing to the commissioners of excise, or whom they shall appoint, leaving a copy of such report under his hand with such maker (if demanded in writing;) and such report shall be a charge upon such maker; and if such officer shall refuse to give or leave a copy of his report in writing at the time of taking such account (being demanded as aforesaid,) he shall, for every such offence, forfeit 4*s.* to such maker. *f.*18.

Maker to keep
scales and
weights.

Every maker shall keep scales and weights, and shall permit such officer to use the same; and if he shall not keep such, or shall not so permit, or shall use any false or insufficient scales or weights, or practise any device to prevent such officer from taking the true weight; he shall, for every such offence, forfeit 100*l.* together with such insufficient scales and weights, which may be seized by any officer of excise. *f.*19.

And to assist in
weighing.

And every maker, when required by such officer, shall, upon request made, with a sufficient number of his servants, assist in weighing and taking an account, and in re-weighing; on pain of forfeiting 50*l.* *f.*20.

Turn of the
scale.

In weighing, the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to the maker 2*lb.* upon every 100*lbs.* and so in proportion for a greater or a lesser quantity, provided that no weight less than 1*lb.* shall be used; on pain of forfeiting such allowance. *f.*21, 22.

Not less than
1*lb.* to be used.

Paper, &c. frau-
dulently hid, to
be forfeited.

In case any paper or articles aforesaid shall be fraudulently hid or concealed, with intent to defraud his majesty of the duties, the same shall be forfeited, together with the packages containing the same, which may be seized by any officer of excise. And the better to enable any such officer to discover the same, if he shall suspect that any such paper, &c. is hid or concealed in any place within the limits of the chief office in *London*, upon oath made before two commissioners or one justice for the county, city, or liberty, where such place shall be, or if in any other part of *Great Britain*, then before one justice of the county or place where such officer shall suspect the same to be deposited or concealed; such

Officers may
search.

commissioners or justice may, if they judge it reasonable, by special warrant, empower such officer by day or night, (but if in the night in the presence of a constable,) to enter such suspected place, and to seize and carry away all such paper, &c. as they shall there find so forfeited, together with the package containing the same; and the person in whose custody the same shall be found, shall forfeit 50*l.* §.23.

No stationer or dealer in paper shall receive into his custody or possession any paper made in *Great Britain*, which shall not at the time of receiving it be an entire ream or bundle, and inclosed in a cover or wrapper stamped or labelled as aforesaid, together with the officer's name and day and year when the duty was charged, and the class marked thereon; on pain of forfeiting 50*l.* together with such paper, which may be seized by any officer of excise. §.24.

Stationers not to receive paper but in an entire ream, &c.

No such stationer, dealer, or other person shall return, or procure, or cause to be returned to any maker, nor to any mill, workhouse, storehouse, room, or other place for the use of such maker of paper, any wrapper or cover which has been before used; but the same shall, together with the impression or label, upon opening any such ream or bundle, forthwith be destroyed: and no such maker shall receive or suffer to be returned to him, or to be kept at any mill, workhouse, storehouse, room, or other place to him belonging, or at any other place for his use, any such wrapper, cover, or label which has been before used; on pain of forfeiting 100*l.* together with such wrapper, cover, or label, which may be seized by any officer of excise. §.25.

Wrappers not to be returned, but to be destroyed.

Provided that nothing herein shall extend to any wrapper or cover which hath been opened, containing therein the same identical ream or bundle of paper which was sent, and is returned on account of being disliked and refused by the person to whom the same was sent. §.26.

Not to extend to paper opened and returned as disliked.

All paper, pasteboard, millboard, scaleboard, and glazed paper, and all materials and utensils for the making thereof in the custody of the maker, or other person in trust for him, shall be liable to and chargeable with all debts and duties for paper in arrear and owing by such maker, and shall also be subject to all penalties and forfeitures incurred for any offence against this act. §.27. 28*G.* 3. c.37. §.21.

Paper and utensils, &c. liable to the duty.

If any question shall arise whether any paper is belonging to the class marked on the cover or wrapper, (although such paper shall appear to have been entered in the officer's books as belonging to such class,) the proof thereof shall lie on the owner or claimant, and be decided by the oaths of two skilful and experienced persons. 34*G.* 3. c.20. §.35.

Proof of the paper being of the class marked, to lie on the owner.

Obstructing
officers.

If any person shall assault, oppose, molest, obstruct, or hinder any officer in the due execution of this act, he shall forfeit 100*l.* *f.* 36.

Oxford and
Cambridge.

All paper of the first denomination used in printing books at *Oxford* or *Cambridge*, in Latin, Greek, Oriental, or Northern languages, and also Bibles, Testaments, Psalm Books, or Books of Common Prayer, printed either in those universities, or by the king's printer, shall have drawbacks allowed on certain conditions. *f.* 37. 39, 40, 41. 43 *G.* 3. *c.* 69. *Sched.* (C.)

Pasteboard not
liable to further
duty.

Provided always, that pasteboard made wholly of paper which hath paid the duty shall not be charged with any further duty upon the sheets being pasted together. 34 *G.* 3. *c.* 20. *f.* 42. & 42 *G.* 3. *c.* 94. *f.* 14.

This act not to
alter 32 *G.* 3.
c. 54.

Provided, that nothing herein shall extend to alter or affect the provisions contained in 32 *G.* 3. *c.* 54. 34 *G.* 3. *c.* 20. *f.* 47.

Counterfeiting
or forging
stamps, &c.

If any person shall counterfeit any stamp, mark, or seal provided by the commissioners of customs in pursuance of this act, or counterfeit, forge, or resemble the mark or impression of any stamp, mark, or seal upon any paper; or knowingly have any such in his possession; or shall knowingly sell or have in his possession any paper marked with a counterfeit or forged mark or impression of any such stamp, mark, or seal, or put the same upon any foreign paper which has not been duly entered; or shall affix upon any ream or quantity of paper any stamp which hath been before used, he shall forfeit 500*l.* *f.* 48.

Allowance to be
made on paper
damaged.

If any such paper, pasteboard, millboard, scaleboard, or glazed paper, for which the duty hath been paid, shall be damaged by the casting away or sinking of the vessel in which the same shall be transported from one part of this kingdom to another, the justices where such accident shall happen shall at the next quarter sessions, upon proof of such damage and of payment of such duties as aforesaid, determine the quantity of damage done to such paper, &c. and an allowance to be made in respect thereof; and shall give a certificate under their hands and seals, or two of them present at such sessions, of the sum allowed; which allowance shall bear the same proportion to the whole of the duties so paid, as the said damage shall appear to bear to the value of such paper before the same was so damaged; and upon producing which certificate to the officer, he shall repay or allow to the proprietor of such paper, &c. out of the duties paid for the same so much money as the sum certified by the said justices shall amount unto; or in default such proprietor may deduct the same out of any subsequent monies becoming due for any paper, &c. made by him. *f.* 49.

Provided

Provided always, that the person who shall sustain such loss shall three days before such sessions give or leave notice in writing thereof with the collector of excise of the district, and of his intention of applying to such sessions for such allowance. *f. 50.*

Notice of application for such allowance.

And all the duties are allowed for such glazed or other press papers for clothiers and hot-pressers as shall be *bonâ fide* used and consumed in the pressing of woollen cloths and stuffs in *Great Britain*. 43 G. 3. c. 69. *Sched. (C.)*

Allowances to clothiers, &c.

Every person intending to claim any such drawback or allowance for glazed paper or press paper shall before he shall begin to make use thereof produce the same to the officer of excise in the original cover or wrapper in which it was charged with the duty, and give to such officer a note in writing, specifying the day and hour on which he intends to produce such glazed or press paper, and also the quantity thereof, and the name and residence of the maker or person from whom and the time when it was received; and such person shall untie and open the same in the presence of such officer who shall take account thereof, and destroy the duty stamp on the covers or wrappers; and as soon as such paper shall have been so long used as to be incapable of being again employed for any purpose, upon application to the proper collector (such application not to be oftener than twice in each year), stating in writing the actual quantity of such glazed paper and press paper so used as aforesaid, and making oath before such collector (who is empowered to administer the same) of the real quantity thereof so used that the same has been actually employed in the pressing of woollen cloths or stuffs by the party applying for such allowance, and for no other purpose whatsoever, and that all such paper and every part thereof is by such use become unfit for any other purpose, and that no drawback has been before received for such paper or any part thereof; then such collector shall allow a drawback of the duties charged or paid for such glazed paper or press paper without any fee or deduction. 42 G. 3. c. 94. *f. 6.*

On certain conditions,

Any person convicted of wilfully taking a false oath in order to obtain a drawback or allowance shall be liable to the pains and penalties for the commission of perjury. *f. 17.*

False oath for drawback, perjury.

And by 43 G. 3. c. 69. For every yard square of paper which shall be *printed, painted, or stained* in *Great Britain*, to serve for hangings or other uses (over and above the duties payable for such paper before the printing thereof,) shall be paid by the printer, painter, or stainer, 1^d.

Duty on painted paper.

By 10 An. c. 19. All persons who shall make any paper, pasteboard, millboard, or scaleboard, or *print, paint, or stain any paper* for sale, or not for sale, shall leave notice in writing

Paper stainer to enter his name and place of abode.

writing at the next excise office, of his name and place of abode, and of the places usually made use of in making, printing, &c. the same; on pain of forfeiting 30l. *f. 43.*

No person shall use any drying place, or other place for making the same fit for use, other than such of which he hath first given notice in writing to the officer; on the penalty of 20l. *f. 44.*

Officers to take an account;

The officer shall be permitted to take an account of all quantities of rags, cordage, and other materials for making paper, &c., in the custody of any maker, and of all paper in the possession of any one using the art of staining, painting, or printing paper; and if hindered, the offender shall forfeit 20l. *f. 50.*

and shall mark every sheet.

Before any paper shall be printed, painted, or stained, the officer shall be permitted to take an account of the quantities and dimensions of all paper in the possession of any such printer, &c.; and shall mark every sheet and piece with a stamp, to denote that such account has been taken. 1 G. 2. c. 36. *f. 17.*

And to make entry of paper.

Every paper printer, painter, or stainer shall once, in every fortnight, make entry in writing upon oath or on the oath of his chief workman at the next office for the said duties of all paper by him printed, painted, or stained within that time, and such entry shall contain the kinds and quantities thereof respectively; on pain of 50l. 26 G. 3. c. 78. *f. 2.*

Duties to be paid.

And every stainer shall, within a fortnight after, pay the duties for all such paper on pain of forfeiting double duty; and no person, after default in payment, shall sell or deliver out any paper until he hath paid the duty, on pain of forfeiting double the value thereof. *Id. f. 3.*

Mark on paper before painting.

Before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and where a single sheet shall be painted, the same shall be produced to the officer, who shall take an account thereof; and if he finds that every sheet is marked or stamped he shall measure the same, and mark such piece or sheet at both ends with a frame mark, denoting the measure thereof, and with such other number or mark as the commissioners shall direct: And if any printer, &c. shall begin to print, paint, or stain any sheet of paper before it is so measured and marked, he shall forfeit 20l. and also such paper which may be seized. *Id. f. 5.*

To be measured.

To be marked after painting.

As soon as any paper shall have been printed, painted, or stained with any colour or figure, the officer shall take an account and charge the duties, and shall stamp every piece where a single sheet, at both ends: And if any such stainer shall remove or send away or suffer to be removed or sent

away

away any piece or sheet of such paper before the same has been taken account of and stamped as aforesaid, he shall forfeit 50l., and also such paper may be seized if found in the possession of any dealer in printed, painted, or stained paper. *Id. f. 9.*

If any officer shall miss any quantity of paper, whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 G. 3. c. 36. f. 17. 26 G. 3. c. 78. f. 10.

Officers to charge for paper missing.

Pieces cut into samples or remnants shall be stamped by the officer, to whom six hours' notice shall be given by such stainer of the time he intends to cut the same. 26 G. 3. c. 78. f. 8.

Pieces cut into samples.

No person shall remove any such painted paper until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 20l. And the said paper being found in the possession of any stationer or other dealer, or other persons for his use, shall also be forfeited. 1 G. 3. c. 36. f. 18.

Not to be removed until an account is taken.

Every stainer shall keep all paper by him printed, painted, or stained, and which hath not been stamped and charged with the duties, separate from the paper that hath been charged; on pain of 50l. 26 G. 3. c. 78. f. 11.

Paper unfurveyed to be kept separate.

If any printer, &c. shall fraudulently hide or conceal any printed, painted, or stained paper, with intent to defraud his majesty, he shall forfeit 100l. *Id. f. 12.*

Concealing paper.

No stainer, &c. shall keep any paper which hath been marked and stamped, in any unentered place: And if any paper which hath been printed, painted, or stained, whether marked or stamped or not, shall be found in the possession of any stainer in such unentered place, he shall forfeit 50l. and also the paper, which may be seized. *Id. f. 16.*

Keeping paper in unentered places.

Upon oath made before two commissioners within their limits, or one justice, by any person that he hath reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereupon such stamp as by this act is directed, the said commissioners or justice may issue their warrant or order, authorising any officer of the said duties, with the assistance of a constable or other peace officer, in the day time, to search for the same, and to open doors, chests, trunks, and packages, and to seize such paper, and to bring the same to the next excise office, which shall be forfeited; and if any person shall obstruct or hinder any such officer from entering any such place, and in seizing or carrying away such paper, he shall forfeit 50l. Provided, that no remnant,

Suspected p. may be se

being of less length than shall be expressed by the frame mark thereon, so found having the stamp at one end thereof, shall be forfeited by reason of not having the stamp at both ends thereof. *Id.* *f.* 17.

Paper marked at one end only forfeited.

To prevent fraud by adding to the length of any piece of stained paper, after the same hath been stamped at both ends, if any piece or remnant of stained paper, not having such stamp and frame mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame mark, or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame mark; the same shall be forfeited, and may be seized, and the stainer, &c. or dealer, in whose possession the same is found, shall forfeit 50*l.* *f.* 18.

Counterfeiting or forging stamps, &c.

The commissioners of the duties shall provide numbers or marks to denote the measure, and stamps or seals to denote the charging the duties, and if any person shall counterfeit or forge any frame, number, or mark, used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100*l.*; or if he shall counterfeit or forge any stamp or seal to resemble those provided in pursuance of this act, or the impression of the same upon any paper in order to defraud his majesty, he shall be guilty of felony without benefit of clergy: And if any person shall sell any paper with such counterfeit stamp, knowing the same, with like intent, he shall forfeit 100*l.* *f.* 13.

Defacing marks.

If any stainer, &c. shall wilfully cut out, obliterate, or deface the frame mark, number, or mark, or wilfully suffer the same to be done; or shall affix upon any piece or sheet of paper any frame mark, or stamp, or seal, which shall have been before affixed on any other piece or sheet of paper, with intent to defraud his majesty, he shall forfeit 50*l.* and such piece or sheet. *f.* 14, 15.

Exportation.

Printed, painted, or stained paper, may be exported on certain conditions specified in the act; but the same shall not be permitted to be packed up in order to be exported, not having the stamps by this act directed, and also the frame marks plain at both ends of every piece, where a single sheet; and the officer who shall attend to see such paper packed up shall measure the same, and see that the said stamps and frame marks are cut off from both ends of every piece or single sheet. 26 *G.* 3. *c.* 78. *f.* 19.

Penalties how to be recovered.

All penalties, fines, and forfeitures, shall be sued for, recovered, levied, and mitigated as by the laws of excise (*a*),

(*a*) For which see *ante*, Sect. III.

or in the courts at *Westminster*, half to the king, and half to him who shall inform or sue. 26 G. 3. c. 78. f. 20. 34 G. 3. c. 20. f. 52.

And all paper, materials, and utensils, in custody of the maker, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner. 10 An. c. 19. f. 55. 28 G. 3. c. 37. f. 21. Utensils liable.

For the stamp duties on paper, see title *Stamps*.

Disputes between paper-makers and their workmen, see that head, title *Servants*.

Sect. V. (12.) Plate.

[9 & 10 W. c. 28. f. 1. — 31 G. 2. c. 32. f. 2—4. 6, 7. 9. 11. 12. — 32 G. 2. c. 24. f. 1. 3. 8. — 43 G. 3. c. 68. — c. 69. — 49 G. 3. c. 98. — 52 G. 3. c. 59.]

By 49 G. 3. c. 98. Certain duties of customs are imposed upon plate.

By 31 G. 2. c. 32. Each person trading in, selling, or vending gold or silver plate, is compellable to take out a licence. f. 2, 3. Licence.

And by 43 G. 3. c. 69. *Sched. (A.)* Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold exceeding two pennyweights, and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces in weight, in one distinct ware is manufactured, shall pay for every such licence

£.	s.	d.
2	6	0

Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of thirty ounces or upwards, in one distinct ware, is manufactured; and every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is manufactured, or taking in or delivering out pawns of such plate, goods, or wares; and every refiner for every such licence

-	-	-	-	-	-	5	15	0
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And the same shall be renewed annually ten days before the end of the year; on pain of forfeiting 20l. 31 G. 2. c. 32. f. 4. 32 G. 2. c. 24. f. 3.

Persons in partnership.

But persons in partnership, carrying on their trade in one house or shop only, shall not be obliged to take out more than one license for one year. 31 G. 2. c. 32. f. 7.

Not to extend to small quantities.

Provided that no person shall be liable to take out any license for trading in, vending, or selling any quantity of gold not exceeding two pennyweights, or of silver not exceeding five pennyweights, in any one separate and distinct ware or piece of goods. 32 G. 2. c. 24. f. 1.

Auctioneer and other selling plate to be deemed traders.

All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid at any auction or public sale; shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a license for the same. 31 G. 2. c. 32. f. 6.

Pawnbrokers and refiners.

No pawnbroker shall by himself or by any other for his benefit (either publicly or privately,) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; nor shall any person by himself, or by any other for his benefit, use the trade of a refiner of gold or silver, without taking out and renewing yearly such license as aforesaid. 32 G. 2. c. 24. f. 4.

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *Id.*

If any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such license, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forfeit 20*l.* *Id.*

Unto what places the license shall extend.

No license shall authorise any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such license, or in booths or stalls at fairs or markets. 31 G. 2. c. 32. f. 7.

Prosecution for offences.

Prosecutions for offences may be in the courts at *Westminster*; or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere before two justices residing near to the place where the offence was committed; and if either informers or defendants shall think themselves aggrieved by the judgment of such justices, it shall be lawful for them to appeal to the next quarter sessions, who shall hear

hear and determine the same, and whose judgment shall be final. *f. 11.*

The said commissioners of excise, and commissioners for appeals, (in case of appeal,) and justices respectively, shall upon complaint or information on oath summon the party accused; and upon his appearance or contempt shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress, and to cause sale of the goods levied upon, (if not redeemed in 14 days,) and for want of sufficient distress shall imprison the offender till satisfaction be made. *Id.*

They may mitigate the said penalty of 20*l.* as by the laws Mitigation.
of excise. 32 *G. 2. c. 24. f. 8.*

All forfeitures (the necessary charges for the recovery Disposal of the
thereof being first deducted) shall be distributed, half to the forfeitures.
king, and half to him who shall inform or sue. *f. 12.*

By the 43 *G. 3. c. 68.* Certain duties are imposed on Importation.
plate imported, as particularly set forth in *Schedule (A)*, annexed to the act; to be under the management of the officer of customs.

So much wrought plate shall be exported yearly as shall be Exportation.
allowed by the commissioners of the customs or three of them. 9 & 10 *W. c. 28. f. 1.*

But no drawback shall be allowed on the exportation of silver plate. 31 *G. 2. c. 32. f. 9.*

[For the duty on plate, and other particulars relating thereto, see *Plate.*]

By 44 *G. 3. c. 98.* Duties are imposed upon plate exported, and certain drawbacks allowed; and by 52 *G. 3. c. 59.* These drawbacks are also allowed upon all plate, provided it be proved before the commissioners of customs that it is new plate, and has never been used.

Sect. V. (13.) *Salt.*

[38 *G. 3. c. 68. f. 94—100. 103. — c. 89. — 39 G. 3. c. 65. f. 5—8. 10. 12. — 41 G. 3. U. K. c. 91. f. 11. 12.—42 G. 3. c. 93. f. 21.—43 G. 3. c. 69.—45 G. 3. c. 14. f. 4. 10, 11. 14. 19.—47 G. 3. f. 2. c. 30. f. 1. 3. 4.—49 G. 3. c. 81. f. 3—5.—51 G. 3. c. 82. 52 G. 3. c. 107.]*

By 38 *G. 3. c. 89. f. 6.* The management of the salt duties Duties
is transferred to the commissioners of excise; and by 43 *G. 3. c. 69. 45 G. 3. c. 14. and 47 G. 3. f. 2. c. 30. f. 2.* several duties are imposed thereon; and by the last act the additional duties charged by that and the preceding act, are charged upon *Glauber* and *Epsom* salts.

Certain

Allowances and drawbacks.

Certain allowances are made on salt consumed by linen bleachers, and certain drawbacks are allowed on exportation. *Sched. (C.)*

What shall be deemed a bushel.

And 65 pounds weight avoirdupois of rock salt shall be deemed a bushel, and 56 pounds of every other kind of salt. 38 G. 3. c. 89. s. 4. 45 G. 3. c. 14. s. 4.

Commissioners may compound with refiners.

The commissioners may compound for the duty with the refiners of rock salt, and also for the duty on mineral alkali or flux for glafs. s. 7.

Salt imported.

The duty on foreign salt or other salt imported, shall be paid by the importer upon entry, and before landing, and if unshipped or landed, or put on shore or into any vessel in *Great Britain*, before duly entered, and the duty paid, or without a warrant for the landing or delivery thereof, signed by the collector, such salt shall be forfeited, together with the packages; and the vessels, horses, cattle, and carriages used in unshipping, removing, landing, carrying, or conveying the same, may be seized by any officer of excise or customs; and every person employed therein, or to whose hands the same shall come after having been so unshipped, &c. as aforesaid, knowing the same, shall for each offence forfeit treble the value of the salt. s. 8.

Salt imported and not entered, forfeited.

If any salt imported shall not be entered and landed and the duty paid within 20 days after the master or person having the charge of such vessel, shall or ought to have made his report of the burthen, contents, and lading thereof as directed by 13 and 14 C. 2. *for preventing frauds in the customs*, such salt shall be forfeited, and may be seized by any such officer. s. 9.

Foreign salt may be warehoused, on bond for payment of the duty.

Provided nevertheless, that foreign salt fairly imported, not less than 50 bushels in quantity, upon entry and before payment of the duty, may be landed in the presence of an officer, and shall be weighed and warehoused upon bond being given by the importer or proprietor in double the amount of the duty, to pay and clear off such duty when sold, if within twelve months, and if not sold within that time, then at the end of such twelve months: the duty to be charged according to the quantity of salt at the time of landing. s. 10.

Warehouses to be secured under the joint lock of the officer and proprietor.

Every such warehouse shall be secured under joint locks of such officer and proprietor; and no such salt shall be put into or be delivered out of such warehouse in less quantity than 50 bushels at one time; and when any such proprietor shall be desirous to lodge or take out such salt, he shall give twelve hours' previous notice in writing to such officer, specifying therein the day and hour, and also the quantity of salt intended to be put in or taken out, and such officer shall attend accordingly. s. 11.

No foreign salt shall be imported in any vessel of less burthen than 40 tons, (except for the use of the seamen, not exceeding 5lbs. for each man,) upon pain of forfeiting such salt, together with the packages, and also such vessel with her guns, furniture, ammunition, tackle, and apparel which may be seized by any such officer. *f. 13.*

In what vessels to be imported.

Provided, that no salt or rock salt, whether the produce of *Great Britain*, or any other country, shall be imported from *Ireland*, *Guernsey*, *Jersey*, *Sark*, *Alderney*, or *Man*, except for the use of the seamen, not exceeding 2lbs. for each man: or if any vessel or boat shall be found at anchor, or hovering within the limits of any port, or within four leagues of the coast, or to have been within such limits and distance, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity, of which the master shall give notice to, and make proof before, the collector or chief officer of the place; then, and in every such case, not only such salt and packages containing the same, but also such vessel with her guns, furniture, &c. shall be forfeited, and may be seized by any such officer. Provided, that the same shall not extend to fishing vessels having on board no more than a necessary quantity of salt duly received from some entered warehouse for keeping fishery salt, or from other vessels employed in fishing, not exceeding the quantity necessary for preserving such quantity of fish, as may be reasonably expected to be taken by the crew, during that trip or voyage.

Salt not to be imported from *Ireland*, *Guernsey*, *Jersey*, *Sark*, *Alderney*, or *Man*.

Fishing vessels having salt on board.

By 45 G. 3. c. 14. *f. 19.* No salt shall be imported from *Ireland* into *Great Britain*, in any ship of less burthen than 100 tons; on pain of forfeiture of the salt, and ship, and furniture, and apparel, which may be seized by the excise officer.

Importation from *Ireland*.

By *f. 10 & 11.* Certain regulations are to be observed in *Ireland*, upon lading ships with salt for exportation, viz. notice of the shipping, and place for which shipped, and bond for duly landing the salt at the place specified in the notice: and the officer in *Ireland* is to give the master of the ship a certificate of the notice having been given and bond entered into. And if any person shall put on board any vessel in *Ireland* more than in the proportion of 2lbs. of salt for each person employed in the ship, without giving such notice and bond, he shall forfeit all such salt, and 100l.

And by *f. 14.* No rock salt shall be refined, or made into white salt, at any place in *Great Britain* exceeding the distance of 10 miles from the salt mine or salt pit, from which the rock salt intended to be refined shall have been raised or taken: except at such works as shall have been duly entered for

Refining of rock salt.

See post 38 G. 3. c. 89. f. 15, 16.

Places for making salt in England to be entered.

Officer may enter and take an account.

Proprietors to provide warehouses, and flow their rock salt therein.

Proprietors to give notice of their intention to take salt out of the mine.

for refining rock salt, and making the same into white salt within one year previous to the passing of this act.

Every person being a maker of salt, or a refiner of rock salt, or a proprietor of any salt mine, salt pit, salt refinery, or salt work, shall before he shall make salt or refine rock salt, or dig, raise, or take any rock salt from or out of any salt mine or salt pit, make entry in writing at the office of excise within the limit of every such salt mine, salt pit, salt refinery, and salt work whatsoever belonging to him, specifying the parish and place where situate, and also the number and situation of all workhouses, sheds, cisterns, receivers, reservoirs, pans, stoves, rooms, lofts, warehouses, storehouses, and other places used for the taking, raising, preparing, making, refining, drying, storing, laying, or keeping of salt, on pain of 100l. together with such salt, and the packages containing the same, and all the preparations, vessels, implements, and utensils used in the procuring or making salt, or found in any private or unentered place; and the same may be seized by any officer of excise. f. 17. 38 G. 3. c. 89.

Any officer of excise may at any time by day or night, upon request, enter into every salt mine, salt pit, salt refinery, or salt work; and also into every such workhouse, &c. aforesaid entered, or made use of by any such maker or refiner, or proprietor of any salt mine, &c., and by weighing, gauging, tale, or otherwise as to him shall seem meet, take an account of the quantity and kinds of salt there found. f. 18.

Every proprietor of any salt mine or pit shall provide a proper warehouse with sufficient fastenings thereto, and adjoining to the entrance or shaft of every salt mine or pit, into which all rock salt shall be put at his expence; and such warehouse shall not have more than three doors into the same, and shall be locked up and secured by the proper officer except at such times as the same shall be opened by such officer for depositing rock salt therein, or when taking an account of or weighing or delivering the same out of such warehouse; and if any such proprietor shall make default in providing or supporting such warehouse; or shall not cause such rock salt to be removed to, and stowed in the same, as aforesaid; he shall forfeit 100l. f. 19.

Every such proprietor shall, 12 hours before he begins to raise or take away any salt from any mine or pit, give notice in writing to the officer of the day and hour when he intends to begin, and if he shall not begin within one hour after the time mentioned in such notice, the same shall be void, and he shall be obliged to give a fresh notice; and in default

default of giving notice, or of giving fresh notice, he shall for every such offence forfeit 20l. *s. 20.*

No rock salt shall be taken out of any such warehouse except in the presence of the proper officer, nor in less quantity than four bushels at one time, and between the hours of five in the morning and seven in the evening from 24th *March* to 29th *September*, and between seven in the morning and five in the evening from 28th *September* to 28th *March* in each year. And all rock salt delivered or removed contrary to this act, together with the package containing the same, and the vessels, waggons, carts, carriages, horses, and cattle employed therein, shall be forfeited, and may be seized by any such officer; and the proprietor of the warehouse shall forfeit also 40s. for every bushel of such salt, or 50l. at the election of the attorney general, or person who shall sue. *s. 21.*

Rock salt not to be taken from warehouses, but in the presence of an officer.

Every maker of salt and refiner of rock salt, and proprietor of any salt work, shall provide and support proper warehouses with sufficient fastenings thereto, into which all their salt (rock salt excepted) shall be put, at the expence of such maker, &c.; and no such warehouse shall have more than two doors for delivering salt out thereof, nor more than four doors immediately into or communicating with any pan or boiling house; nor shall there be any other door or communication whatsoever between any such warehouse and any other place, except such doors as aforesaid; and every such warehouse shall be locked up by the proper officer, except at such times only as such officer shall be attending for the purpose of depositing salt therein, or for weighing or taking account of or delivering salt out of the same; and if any such maker, &c. shall neglect or refuse to provide such warehouses as aforesaid, he shall forfeit 50l. *s. 22.*

Makers and refiners of salt to provide warehouses, &c.

Every such maker, refiner, and proprietor shall six hours before he shall begin to charge any pan or boiler with brine, or other preparation for making or refining salt, give to the officer a notice in writing, specifying therein the particular time and hour at which he intends so to begin, and also whether he intends to make large grained, commonly called *fishery salt*, or finegrained salt; and if he shall not begin within one hour after the time mentioned in such notice, the same shall be void, and he shall be obliged to give a fresh notice, and in default of giving such notice, or such fresh notice, he shall forfeit 20l. for every such offence. *s. 23.*

To give previous notice of charging their pans.

Every such maker, &c., who in pursuance of such notice as aforesaid shall begin so to charge his pan or boiler, shall proceed without delay and with all due dispatch to charge the same with brine or other preparation for making salt or refining rock salt, and shall charge such pan or boiler with the

And to proceed without delay.

Brine may be added once but not more.

The whole operation to be finished before fresh brine is put in.

Salt taken from each pan to be kept separate.

Maker to provide workmen and assist.

Half the salt of one boiling may be warehoused before the whole is finished.

Salt not to be warehoused until an account be taken.

the whole quantity intended to be worked off at such operation, on pain of forfeiting 20*l*. Provided, that if any such person shall have occasion to increase the brine in any pan or boiler after having been charged, and before any salt hath been taken therefrom, he shall be allowed once but not oftener to increase the quantity of brine in any such pan or boiler, upon giving to such officer a notice in writing of such his intention two hours before he shall begin to make such increase. *s. 24.*

If any such maker, &c. shall put any brine into any pan or boiler after he hath begun to take any salt out of the same, and before the whole operation of such particular charge shall be finished and all the salt taken out, or shall put any brine into any pan or boiler after the same hath been fully charged, (except as aforesaid,) he shall forfeit 50*l*. *s. 25.*

All the salt taken out of each pan or boiler at each operation shall be kept in the pan house or boiling place separate from all other salt whatever; and within ten hours after so taken out and before any salt of any subsequent boiling shall be taken from out of the same pan or boiler, such maker, &c. shall deliver to the proper officer a declaration in writing, specifying the number of baskets, barrows, or troughs of salt made at such boiling, and thereupon such officer shall take an account of the number thereof: And as soon as he shall have taken such account, such maker, &c. shall with a sufficient number of his workmen remove all such salt into his entered warehouse, storehouse, or loft; and upon neglect or refusal, shall forfeit 20*l*. *s. 26, 27.*

In case any such maker, &c. instead of keeping the salt of each boiling in the pan or boiling house until the whole of each boiling is finished, shall be desirous to put any salt of any particular boiling into his warehouse, before such boiling is finished, he may put one half (but neither more nor less) of the whole number of baskets, barrows, or troughs made at each such boiling into such warehouse upon the following terms, *viz.* that in the notice required to be given for charging his pan or boiler, he shall specify the number of baskets, barrows, or troughs of which such half shall consist, and the day and hour when such half shall be removed into such warehouse; and also, that all the salt which, according to such specification shall be intended to be removed into such warehouse at each such removal, shall be actually so put immediately after such officer hath taken an account thereof, and before any more or other salt shall be taken out of the pan or boiler of that or any subsequent boiling. *s. 28.*

If any such maker, &c. or other person shall remove any salt of which an account has not been taken (rock salt excepted) into any such entered warehouse, or shall convey out of any such pan house, boiling house, or boiling place to any place,

place, any salt, before the boiling, of which such salt is a part, shall be worked off, or the declaration herein required shall have been delivered to such officer, or before he hath taken an account of and ascertained the number of bushels, barrows, or troughs of salt of such boiling, or before the same shall have been removed into such entered warehouse, then all the salt so removed, contrary to the true intent and meaning of this act, shall be forfeited, together with the package, which may be seized by any such officer; and such maker, &c. or other person so offending shall forfeit 20s. for every pound thereof, or 100l. at the election of the attorney general, or person who shall sue. *s. 30.*

Every such maker or refiner may deliver salt duty free (rock salt excepted) from such warehouse, storehouse, or loft, to be forthwith conveyed to and deposited in any export warehouse at *Liverpool* or *Bristol*, for the purpose of being exported therefrom beyond sea. *s. 32.*

Salt may be removed to export warehouses.

Before such salt shall be removed to such export warehouse, the maker, refiner, or proprietor shall give bond in double the amount of the duty that the same shall be delivered at such export warehouse (danger of enemies excepted), and shall not be delivered for home consumption or otherwise fraudulently disposed of in *Great Britain*. *s. 70.*

Bond to be given

Every such bond shall be discharged, upon leaving with the proper officer within three months a certificate that such salt was duly delivered at and secured in such warehouse to which consigned. *s. 71.*

How such bond may be discharged.

Provided, that if on the arrival at *Liverpool* or *Bristol* of any salt so delivered upon bond, to be delivered at any such export warehouse, the proprietor shall be desirous of immediately exporting the same, instead of first putting it into such export warehouse, he may upon conforming to the rules herein prescribed, immediately ship the same, and the officer being satisfied, shall give a certificate testifying the quantity so shipped; which being left with the proper officer where such bond was given, and if the same agree with the quantity first delivered out, such bond shall be discharged. *s. 72.*

Salt removed to export warehouses may be immediately shipped.

If any salt or rock salt shall be taken out of any such warehouse or other place used by any such maker, &c. except in the presence of an officer of excise and according to the directions of this act, between seven in the evening and five in the morning from 24th *March* to 29th *Sept.* or between five in the evening and seven in the morning from 28th *Sept.* to 25th *March*, such salt and rock salt, together with the package containing the same, and also the waggons, carts, or other carriages and horses and cattle employed in removing the same, shall be forfeited, and may be seized by any such officer; and every person concerned or employed in

Salt not to be removed but at certain times.

in such removal, or in whose possession such salt shall be found, shall forfeit 100*l.* for every such offence. *s.* 34.

Not without a permit.

If any salt or rock salt shall be found, removed, or removing from any salt mine, salt pit, or salt work without a permit accompanying the same; or if consigned to *London, Liverpool, Worcester, Gloucester, or Bristol*, shall be found removed or removing to any of the said places, or if any shall be removing coastwise, without a permit accompanying the same, or under a false description, such salt shall be forfeited, together with the package containing the same, and also the ships, boats, vessels, waggons, carts, or other carriages, horses, and cattle used in removing thereof, which may be seized by any officer of excise; and the person in whose custody the same shall be found, or who shall be or shall have been concerned therein, shall forfeit 40*s.* for every pound weight thereof, or 100*l.* at the option of the attorney general or person who shall sue. *s.* 35.

Persons removing salt without a permit, may be carried before a justice and fined or imprisoned.

If any officer of customs or excise shall discover any person in the act of carrying or removing salt or rock salt from any mine, pit, or work, without being accompanied by a legal permit, such officer may apprehend such person and take him before a justice, who, on confession or proof on oath of one witness, may convict such person in the penalty of 50*l.* if which be not immediately paid into the hands of such officer, or such sum to which such penalty may have been mitigated by such justice, such offender may by warrant be committed to the house of correction to hard labour for (not exceeding) twelve months, to be reckoned from the day of such conviction, and he shall not be discharged until he shall have paid the said penalty, or the sum to which it shall have been mitigated, or until such term of commitment is expired. *s.* 36.

Warehouses to be approved by the officer, and repaired and altered as he shall direct.

No such warehouse, storehouse, or loft shall be deemed secure until approved of in writing by the officer, surveyor, or supervisor of the district. And every such maker, refiner, proprietor, and dealer shall, at his own expence, when required by such officer, set about altering, repairing, or amending such warehouse, &c. which he shall do to the satisfaction of such officer: And if he do not so alter, &c. as aforesaid, or if any person shall by any means whatsoever open or enter or gain access to any such warehouse, except in presence of the proper officer, whose business it shall be to attend to unlock the same, he shall for every such offence forfeit 20*l.* *s.* 37, 38.

Locks and fastenings to be provided by the officer at the expence of the proprietor,

And the officer of the district shall in such cases provide and affix proper locks, keys, and fastenings of the best sort at the expence of the maker, &c. upon every warehouse, &c.; and if he shall refuse or neglect to pay for the same, or if any person shall wilfully destroy, damage, or injure the same, or shall

shall by any device open, take off, or remove any such lock, key, or fastening, or shall open, break, or remove any door, shutter, partition, floor, or roof or any part thereof belonging to any such warehouse or place aforesaid he shall, for every such offence, forfeit 100*l.* §. 39.

Every such maker, refiner, proprietor, or dealer to whom such locks, keys, and fastenings shall belong shall, when required by such officer, alter, repair, and amend the same within a reasonable time, on pain of forfeiting 20*l.* §. 40.

When any such maker, refiner, or proprietor shall have occasion to deliver salt out of any such entered warehouse, &c. he shall give two hours' notice of his intention to the proper officer, specifying therein whether the salt to be delivered be rock or other salt, and whether for home trade or immediate exportation, or for removal to any and what particular export warehouse, or for the use of the fisheries, or rock salt, to be used at any and what refinery of rock salt, or for making of mineral alkali or flux for glass; and thereupon such officer on being ordered by the supervisor, and not having other necessary employment at the time, shall attend and open such warehouse or place, and weigh and take an account of all the salt so delivered out, and shall make a just report and return thereof to the commissioners or whom they appoint to receive the same, which return shall be a charge upon such maker, refiner, or proprietor: Provided nevertheless, that such proprietor shall be discharged from payment of the duty for so much of the rock salt so returned and charged as aforesaid as shall be carried to such refinery of rock salt for the purpose of being refined, or for making mineral alkali or flux for glass; and shall also be relieved from payment of the duty for so much salt returned and charged as aforesaid (rock salt excepted) as shall be delivered for immediate exportation, or for removal to any such export warehouse, or for curing *fish*, and that such salt be removed and delivered according to the directions of this act: Provided also, that such rock salt so delivered for exportation unrefined, shall pay no higher duty than 1*d.* for every bushel. §. 41.

Whereas it is expedient that rock salt should be refined and made into white salt, it is enacted that after 10th Oct. 1798 rock salt may be refined and made into white salt at any such salt work (and no other) as shall be erected and duly entered for refining rock salt at any place within ten miles of the mine or pit from which the same shall have been taken, or which shall have been entered and used for refining rock salt previous to the passing of this act. And if any person shall refine any rock salt, or make the same into white salt except at such places as aforesaid, or licensed under the

and to be repaired by the proprietor.

Notice to be given when salt is intended to be taken out of warehouses.

Officer to attend and take an account.

Rock salt taken out for refining.

Salt taken out for exportation or curing *fish*.

Rock salt may be made into white salt.

provisions of this act, he shall forfeit 200*l.* *f.* 15, 16. see *ante* 45 *G.* 3. *c.* 14. *f.* 14.

Permits to be granted.

When any maker, refiner, or proprietor shall have occasion to remove or send away any salt or rock salt, the officer of the division shall without fee upon a request note being delivered to him grant a permit under his hand, which shall express the quantity or weight of such salt or rock salt, distinguishing whether rock salt or other salt, and the names of the respective persons from whom and to whom the same is intended to be removed, and whether by land or water, and by what mode of conveyance; and if rock salt, whether for the purpose of being refined in *England* or for making mineral alkali, or for exportation in its native unrefined state; and if not rock salt, whether for home consumption or immediate exportation, or to any and what particular export warehouse, or salt to be used in curing fish, and such officer shall specify therein the time for which the same shall be in force. *f.* 42.

Request note to be first delivered.

No such permit shall be granted or be valid, unless such maker, refiner, or proprietor, or his known servant, shall deliver to such officer a request note in writing specifying his name, and also the name of the person to whom and the place to which such salt is intended to be removed, and the weight or quantity thereof, and whether to be removed in bulk, or in baskets, bags, or other packages, and the number, kind, and sort of such packages, and whether to be removed by land or water, and by what mode of conveyance, and if rock salt, whether for the purpose of being refined by the person to whom sent, or for making mineral alkali, or for exportation in its unrefined state; or if other salt, whether for home consumption or exportation, or to be used in curing fish. *f.* 43.

Permit after expiration to be returned.

Every person by whom any such permit shall have been received, and in whose possession the same shall be, shall upon demand by any such officer of excise after the time limited in such permit for the removal of any salt specified therein shall be expired, deliver the same to such officer on demand; on pain of forfeiting 50*l.* for every such offence. *f.* 101.

Giving false permits.

If any person shall knowingly and willingly give any false or untrue permit or receive any such false permit with any salt or rock salt removed as aforesaid; or shall fraudulently alter or erase any such permit, or publish or make use of the same, so altered, counterfeited, forged, false, untrue, altered, or erased as aforesaid, he shall forfeit 500*l.* for every such offence. *f.* 132.

A daily account to be kept of salt sold and delivered and for what purpose.

And every such maker, refiner, or proprietor shall daily enter in a book or paper an account of every parcel and quantity of salt sold, delivered, or sent out by him, distinguishing

tinguishing the species of salt, and whether intended for home trade or consumption, or for immediate exportation, or for removal to some export warehouse, specifying the same and the owner thereof, or for curing fish, or rock salt for refining, or making mineral alkali; which book or paper shall be returned to the next excise office every six weeks, and the truth thereof verified upon the oath of such maker, &c. or his chief workman or agent before the collector or supervisor; on pain of forfeiting 100l. *f. 44.*

Every such maker, &c. shall within one week after such entry upon oath hath or ought to have been made pay and clear off all the duties due in the then current week, unless he give bond in double the value of the duties likely to arise or become due within any six weeks, for the due payment thereof at the end of every six weeks; and if any such maker, &c., who shall not have given such bond shall neglect or refuse to clear off the duty at the end of every week, he shall for every such offence forfeit double the amount of such duty. *f. 45, 46.*

Duties to be cleared off, or bond given.

And all salt and rock salt, and all materials, preparations, machines, utensils, and vessels in the custody of any such maker, &c. or person for his use, shall be liable to all duties in arrears, and also be subject to all fines, penalties, and forfeitures for any offence against this act; and it shall be lawful in all such cases to levy the same and to use such proceedings as may be done in relation to such salt, rock salt, materials, and other articles aforesaid, as if the debtor or offender was the true and lawful owner. *f. 47.*

Materials answerable for the duty.

If any rock salt shall be found removing to or delivered at any premises belonging to any salt refinery or salt work whatsoever without a legal permit according to the directions of this act, the same shall be forfeited, together with the packages, and vessels, waggons, carts, and other carriages, horses, and cattle used in removing thereof, which may be seized by any such officer; and every person concerned in removing or knowingly receiving the same without such permit as aforesaid, shall forfeit 100l. *f. 48.*

Removing rock salt without a permit.

If any refiner of rock salt shall remove or dispose of any rock salt in its unrefined state, except for melting at and for the use of his own works, or knowingly suffer any rock salt to be removed or disposed of contrary to the true intent and meaning of this act, he shall forfeit the same, together with the packages, which may be seized by any officer of customs or excise; and shall also forfeit 40s. for every pound weight thereof, or 100l. at the election of the attorney general, or person who shall sue. *f. 49.*

Or in its native state.

Every such maker, refiner, and proprietor shall provide and keep sufficient scales and weights at every salt mine, pit, refinery

Scales and weights to be provided.

finery work, export and import warehouse, and shall permit the officer to use the same, and in default thereof, or if he shall in weighing make use of any false or insufficient scales or weights, or shall practise any device by which such officer may be prevented from taking a just weight, and ascertaining the true quantity of such salt or rock salt, he shall forfeit 100*l.* together with such false or insufficient scales and weights, which may be seized by any such officer. *s.* 50.

Makers, &c. to assist with their servants.

Every such person shall, when required by the officer, assist with a sufficient number of his servants to the utmost of his power in weighing the same, on pain of forfeiting 100*l.* *s.* 51.

Concealing salt to evade the duty.

If any person shall remove or carry away or conceal any salt or rock salt with intent to evade the duty, he shall forfeit 50*l.* together with such salt, &c. and the packages which may be seized by any such officer. *s.* 52.

Not less than two bushels to be weighed at one draught.

Where any officer is required to ascertain the quantity of salt, &c. by weight, no less than two bushels shall be weighed at one draught, except where the whole quantity to be delivered at one time shall be less than two bushels, and in weighing the turn of the scale shall be in favour of the crown, and in lieu thereof an allowance shall be made after the rate of half a pound in every two bushels. *s.* 53.

Officers may seize salt found in vessels and carriages suspected of being clandestinely removed.

Any officer of excise or customs may seize any quantity of salt, &c. together with the package, that shall be found in any vessel, waggon, cart, or carriage, or loaded on any horse, or which shall be lodged or concealed in any house, out-house, or other place, and also such vessel, carriage, horse, and cattle made use of in drawing such carriage, or in carrying such salt, when such officer shall have good reason to suspect and believe that such salt hath been privately and clandestinely procured or made in some private salt work, or other private place, or clandestinely imported without payment of duty, or hath been fraudulently unshipped or re-landed after having been shipped for exportation, or for curing fish, or fraudulently or clandestinely taken out of any warehouse, or other place where lodged under the direction of this act; and if the party in whose possession such salt, &c. shall be found, or who shall lay claim thereto, shall not, at the hearing for condemning the same, make it appear to the satisfaction of the court or jury that the duty hath been fairly paid, or that the same was not landed, unshipped, or re-landed, or taken out of any such warehouse or place as aforesaid, with any fraudulent intent, then such salt, &c. together with the package, and the vessels, waggons, carts, carriages, and horses in and upon which the same shall be found, and the cattle used in drawing the same, or which shall be used or employed in removing such salt, &c. shall be

be forfeited, and the person in whose custody the same shall be found, or who shall be concerned or employed therein, shall forfeit 40s. for every pound weight thereof. *f. 54.*

And if any salt, &c. shall be fraudulently lodged, hid, or concealed in any place with intent to evade the duty, the same shall be forfeited, together with the package, and may be seized by any officer of excise or customs; and if he shall have cause to suspect that any such salt, &c. is lodged or concealed in any place within the limits of the chief office in *London*, upon oath made by such officer before two commissioners of excise, elsewhere before one justice, where such officer shall suspect such salt, &c. to be lodged or concealed, setting forth the grounds of such suspicion, they shall by warrant empower such officer by day or night, (but if in the night in the presence of a constable) to enter into every such suspected place, and to seize and carry away all salt, &c. there found so lodged or concealed, together with the packages; and the person in whose possession such salt, &c. shall be found shall forfeit 40s. for every lb. thereof, or 100l. at the election of the attorney general or person who shall sue. *f. 55.*

Officers may search for salt hid, by warrant from the commissioners or a justice.

If any salt, &c. shall be seized, and any dispute shall arise whether the duties thereon have been paid, in every such case the proof of the payment of the duties, or that the salt, &c. was fairly and lawfully removed from some entered salt work according to the directions of this act, shall lie on the owner or claimer, and not on the officer who shall seize the same. *f. 56.*

Proof of payment of the duty to lie on the owner.

No rock salt shall be delivered duty free except such only as shall be removed out of the warehouse belonging and adjoining to the mine or pit from whence the same was taken, to be carried to some entered refinery of rock salt according to the regulations of this act, and shall be conveyed directly from such warehouse to such refinery. *f. 59.*

Rock salt not to be delivered duty free except from the warehouse where raised.

Provided nevertheless, that nothing herein shall extend to prevent any such maker of mineral alkali or flux for glass from taking rock salt out of any such warehouse duty free for making thereof, on giving bond as hereinafter prescribed. *f. 60.*

Except for making mineral alkali, &c.

No rock salt shall be delivered duty free to be refined at any entered refinery, before the proprietor of such mine or pit from whence taken shall give bond in treble the value of the duty that such rock salt shall be duly delivered at such refinery, and into the custody of the entered refiner to whom it is sent (danger of enemies excepted); and that no part thereof shall be sold or delivered for any other purpose, or otherwise fraudulently disposed of. *f. 73.*

Bond to be given.

How such bond shall be discharged.

Such bond shall be discharged upon such proprietor leaving with the proper officer a certificate under the hand of the officer where such salt was delivered, testifying that the same was duly delivered: provided, that the certificate shall be left with the officer within 3 months from the delivery from the warehouse. *f. 74.*

Rock salt delivered duty free, not to be removed along with other salt.

No rock salt which shall be delivered duty free to be conveyed to any refinery shall be removed in any vessel, waggon, cart, or carriage in which any salt of any other description or for any other purpose shall be put; on pain of forfeiting the same, together with the package, which may be seized by any officer of customs or excise. *f. 75.*

Warehouses for storing salt for exportation.

Every maker, refiner, or dealer may provide export warehouses at *Liverpool* or *Bristol*, for keeping therein salt intended for *exportation*, provided that the same be securely built, and that each have not more than one door or entrance into the same, and that there be no other communication between any such warehouse and any other place whatsoever; and that no such warehouse be less than 20 yards distance from any other warehouse used for keeping salt for home consumption, and be not used until entry in writing thereof be made at the next excise office. *f. 31.*

Such warehouses to be locked.

Every such warehouse shall be locked up by the proper officer, except when he shall be attending for depositing salt therein, or delivering out salt for exportation. *f. 32.*

Delivering salt for exportation.

No salt shall be delivered duty free for *exportation*, except from the warehouse or other place belonging and adjoining to the salt work or refinery where made or refined, or from some export warehouse provided as aforesaid, according to the directions of this act. *f. 57.*

No rock salt shall be *exported* on payment of only the low duty, except the same be delivered out of the warehouse belonging and adjoining to the mine or pit from whence taken; and shall be conveyed immediately from such warehouse to the port from whence the same is intended to be exported, and shall be there put on board the vessel in which the same is intended to be exported, and shall not be landed or put into any warehouse or place in *Great Britain*, except in case of unavoidable necessity; on pain of forfeiting the same. *f. 58.*

Notice to be given of delivering salt for exportation, or for curing fish, &c.

When any such maker, refiner, or proprietor shall have occasion to deliver salt for *exportation* or for *curing fish*, or to be conveyed to any such export warehouse as aforesaid, he shall give two hours notice thereof in writing to the proper officer, and shall specify therein the day and hour when he intends to weigh and deliver such salt, and the quantity thereof; and if intended for immediate exportation, shall specify

specify at what port such salt is intended to be shipped, and by what conveyance the same is to be carried to such port, and if intended to be removed to any such export warehouse as aforesaid, to what warehouse, and the name of the owner thereof, and by what conveyance intended to be removed; or if such salt be intended for *curing fish*, then he shall specify in such notice the name of the fish curer to whom and the place to which the same is to be sent, and by what conveyance. *f. 61.*

Provided, that where the vessel in which such salt is intended to be conveyed shall be incapable either from want of water or other unavoidable circumstance to convey the whole quantity of salt specified in such notice, in that case such maker, refiner, or proprietor may discontinue such weighing and delivery, upon giving notice in writing to the officer, specifying therein the real cause, and the true quantity actually weighed and delivered. *f. 62.*

Before any such salt shall be delivered duty free, or rock salt on the low duties for *exportation*, such maker, refiner, or proprietor shall give bond in treble the amount of the duty that all such salt so to be delivered shall be immediately shipped on board the vessel in which it is intended to be exported, and that no part thereof shall be delivered for home consumption or otherwise fraudulently disposed of in *Great Britain*. *f. 63.*

Such bond shall be discharged upon such maker, refiner, or proprietor leaving with the officer where delivered within two months a certificate under the hand of the officer where shipped, testifying that such salt was duly shipped for *exportation* as by this act prescribed. *f. 64.*

If on the arrival at *Liverpool* or *Bristol* of such salt for *exportation* (rock salt excepted) the vessel in which the same was intended to have been exported shall have sailed, or if for want of stowage or other cause the same cannot be taken on board, the owner upon giving notice in writing to the officer within 12 hours after arrival of the salt, and duly observing the regulations herein prescribed, may deliver such salt or such part of the same into any such export warehouse, and upon certificate of such officer the bond given for exporting the same shall be cancelled. *f. 65.*

When any proprietor of any such export warehouse shall have occasion to deliver salt therefrom for *exportation*, he shall give six hours notice in writing to the proper officer, specifying therein the day and hour when he intends to weigh and deliver the same, and the quantity thereof, and the name of the vessel, and of the master thereof, and to what place such salt is intended to be exported. *f. 66.*

Whether the vessel is incapable of receiving the whole quantity intended.

Bond to be given.

How discharged.

When on its arrival at *Liverpool*, &c it cannot be taken on board.

Notice to be given of delivering salt from export warehouses for exportation.

An account of stock in export warehouses to be taken annually.

The officer shall in *June* yearly weigh and take an account of all the salt remaining in any such export warehouse as aforesaid, and if it shall appear that the whole quantity delivered since taking the last preceding account, added to the quantity then remaining, falls short of the quantity delivered or deposited in such warehouse, the proprietor shall for such deficiency forfeit 17s. for every bushel, one-sixth part to the officer, and the remainder to his majesty; but if instead of a deficiency there shall appear an increase on taking such account, the same shall be deemed part of the depending stock, and shall be carried forward as part of the established stock of salt in such warehouse. *f. 67. 49 G. 3. c. 81. f. 4.*

Rock salt for refining or exportation, and salt for exportation and curing fish not to be removed in the same vessel, &c. with other salt.

No rock salt delivered duty free for refining, or upon the low duties for *exportation*, or salt delivered duty free for *exportation* or for *curing fish*, shall be removed in any flat, barge, boat, or other vessel, or in any waggon, cart, or other carriage, in which (in the first and second cases) salt, of any other description or salt or rock salt for any other purpose, and in the last case, salt of any other description or for any other purpose shall be put or laid, on pain of forfeiting the same, which together with the package may be seized by any such officer. *f. 75.*

Previous notice to be given of shipping salt for exportation.

Before any salt, &c. shall be shipped for *exportation*, the shipper or exporter shall give six hours previous notice in writing to the proper officer, specifying therein the quantity of salt, the name of the ship and of the master, and the port to which consigned, and shall also before shipping give bond (in which the master shall join) in treble the value of the duty for home trade that the same shall be duly exported, and shall not be unshipped or reloaded in *Great Britain*. *f. 76.*

To be weighed and shipped in the pretence of an officer.

All such salt, &c. shall be weighed and shipped in the pretence of an officer, who, on being satisfied that all such salt or rock salt brought immediately from the salt work for *exportation* hath been duly shipped for *exportation*, shall give a certificate specifying the quantity and species so shipped, and also the name of the person from whom it was brought, together with the date and number of the permit, and the day when so shipped as aforesaid. *f. 77.*

Salt shipped for exportation, being unshipped or reloaded.

If any salt, &c. entered and shipped for *exportation* shall be unshipped or laid on land, or put into any other vessel in *G. B.* (shipwreck or unavoidable accident excepted) in every such case, over and above the penalty of such bond as aforesaid, all such salt, &c. so unshipped, &c. or the value thereof shall be forfeited, together with the package and also the vessel from or out of which and the vessel into which such salt shall be taken, which may be seized by any officer of the customs or excise. *f. 81.*

Provided,

Provided, that any known *fish curer* may import foreign salt and lodge the same in his entered warehouse, free of the duty on foreign salt, for the sole purpose of *curing fish*, not less than 50 bushels at one time, upon the conditions and subject to such rules and restrictions as are provided with respect to *British* salt delivered to fish curers duty free. Provided that such foreign salt be duly entered upon importation with the proper officer. *f. 12.*

Salt for curing fish may be imported.

Before any person shall receive any salt duty free for *curing fish*, he shall make entry in writing at the next excise office of his name and place of abode, and of the number and situation of his warehouses or places for keeping salt, which shall be first provided good and secure, and approved of in writing by the surveyor or supervisor of the district. *f. 92.*

Fish curers to make entry.

The lords of the treasury may upon such terms as they think expedient authorize the commissioners of excise to permit salt to be delivered duty free for *curing fish* to any person intending to take and to salt fish, and residing at any place where the inhabitants thereof have usually been before the passing of this act allowed to receive salt for the purpose of curing fish, although such persons may not be provided with such cellars or warehouses, or have made such entry as aforesaid. *f. 93.*

Treasury may permit salt to be delivered to certain fish curers without entry,

Before any salt shall be delivered duty free for *curing fish* the maker, refiner, or proprietor of the salt work from which the same shall be delivered, or the merchant on whose account or order it shall be so delivered, shall give bond in treble the amount of the duty (in which bond the master or owner of the vessel in which such salt shall be carried shall join) that all such salt (danger of enemies excepted) shall be delivered to the fish curer to whom consigned, and shall not, before such delivery, be sold or delivered for home trade or consumption, or fraudulently disposed of in *Great Britain*. 38 G. 3. c. 89. *f. 68.*

Before salt shall be delivered for curing fish, bond to be given.

Such bond may be discharged upon certificate under the hand of the proper officer that such salt hath been duly delivered to such *fish curer*; and such certificate been left within three months with the proper officer after day of delivery from the storehouse. 38 G. 3. c. 89. *f. 69.*

How such bonds may be discharged.

But by 39 G. 3. c. 65. *f. 5.* Where the warehouse is at a distance from the sea coast, and the intended port of shipment, and the salt is intended to be conveyed in any flat or vessel from such salt works or warehouse down any river to such port, then in lieu of the bond, by 38 G. 3. c. 89. *f. 68.* directed, the maker, refiner, or proprietor of the salt works whence the same is to be delivered or the merchant on whose account, or on whose order the same shall be delivered shall give bond to be approved of by the commissioners of excise,

cise, or the person by them for that purpose deputed, in treble the duty of the salt so intended to be delivered (in which bond the master or owner of the flat, &c. shall join,) that all such salt shall with due dispatch be conveyed in such flat, &c. to such port, and shall immediately on arrival there be shipped on board the vessel in which it is to be carried coastwise for delivery to the *fish curer*, and that no part of such salt shall before so lading and shipping be put, sold, or delivered for home trade or consumption, or otherwise fraudulently disposed of in *G. B.*

And by *f. 7.* Immediately upon the arrival of such flat, &c. at the port of shipment, the merchant on whose account or to whose order the same shall be delivered shall give bond (to be approved as aforesaid) in treble the amount of the duty of the salt so intended to be delivered for curing fish, (in which bond shall join as before) that all such salt shall be duly delivered to the *fish curer* to whom consigned, and that no part shall be previously sold or delivered for home trade or consumption or otherwise fraudulently disposed of in *G. B.*

And by *f. 6.* The bond mentioned in *f. 5.* of this act shall be discharged upon certificate by the maker, refiner, proprietor, or merchant left with the officer of excise, under the hand of such other officer of excise, as shall be thereto authorized, testifying the performance of all the aforesaid matters and those in such bond contained. Provided that such certificate be left with the proper officer of excise within one month next after the day of delivery from the warehouse, &c.

By *f. 8.* Certain provisions were enacted as to discharging the bond mentioned in *f. 7.* of this act of the 39 *G. 3.*

But by *f. 11.* of the 41 *G. 3. U.K. c. 91.* the 39 *G. 3. c. 65. f. 7, 8.* are repealed, and it is enacted that upon the arrival of any boat or vessel having on board salt for the preserving of fish, at the port at which such salt is intended to be put on board any vessel to be carried coastwise, for the delivery to the fish curer for whom the same is sent, the merchant on whose account or to whose order the same shall be delivered, shall either by himself or by any other person give bond in the amount of the duty of such salt, in which bond the master of the ship shall join, that all such salt shall be duly delivered into the possession of such fish curer for whom the same is sent, and that no part shall be first sold or delivered for home trade or consumption, or otherwise fraudulently disposed of in *Great Britain.*

And by *f. 12.* Such bond shall be discharged upon producing to and leaving with the officer of excise a certificate that the salt has been so duly delivered;—the said certificate being

being produced and left within six months after the day on which the shipment to be removed coastwise took place.

f. 13. Such bonds not to be subject to stamp duty.

Every *fish curer* and other person, before he shall be allowed to receive salt duty free, shall give bond in treble the value of the duty on salt by him received in the preceding year, or if he have not had any salt in his custody for such purpose in the preceding year, then the bond shall be in treble the value of the duty of all the salt he shall declare it to be his intention to receive in the next year from the taking the bond, or in 50*l.* at the election of the commissioners of excise or their authorized agent that all the salt received by him shall be consumed in curing fish, or delivered over to some other fish curer for curing fish, and that such salt shall not be used in any other manner; and that he will in *May* yearly deliver to the proper officer an account of the true quantity of salt which he hath received into his custody duty free during such year, and the quantity consumed in curing fish, and the quantity of every kind of fish by him cured with such salt, and likewise the quantity of salt delivered over to any other fish curer, with the name of such person, and the time when delivered, and that he will produce and weigh in the presence of an officer all the salt then in his custody. And every such fish curer and other person, who shall receive salt duty free as aforesaid, shall verify his account upon oath before the proper officer of excise on pain of forfeiting treble the value of all the salt delivered to him within twelve months last preceding. 38 G. 3. c. 89. *f. 94, 95.*

Bond to be given by fish curers, &c.

An account to be taken yearly,

and verified upon oath.

Such bond shall be renewed at every time such *fish curer* or other person shall or ought to have delivered such account, and on his neglect or refusal he shall forfeit all the salt in his custody, with the packages, and the same may be seized by any such officer. *f. 96.*

Such bonds to be renewed.

Whereas by 41 G. 3. c. 21. Any person receiving or shipping on board any vessel any quantity of salt free of duty for the purpose of salting, curing, or preserving fish, is required to give such bond or security as is in the said act in that behalf prescribed, that he will duly account for all the salt which he shall at any time ship, &c. on board his vessel for the purpose of salting, curing, or preserving fish, and that such salt shall be *bonâ fide* employed, spent, and consumed in salting, curing, or preserving of fish, or shall be returned into the warehouse entered for the keeping or storing of salt duty free from whence the same was taken: And whereas by the said act no time is limited within which such person shall so duly account for such salt, or for such salt being so employed, spent, and consumed, or being returned into the warehouse, it is enacted,

Such salt shall be accounted for within twelve months after the receipt thereof.

that

that all such salt shall be duly accounted for as aforesaid within twelve months, to be computed and reckoned from the day of such receipt thereof; and every part thereof shall within such twelve months be fairly and *bonâ fide* employed, spent, and consumed in salting, curing, or preserving of fish as aforesaid, or shall be returned into the warehouse entered for the keeping or storing of salt duty free from whence the same was taken, and every such bond or security given after the passing of this act shall be conditioned accordingly.

51 G. 3. c. 82. s. 7.

Before salt be delivered to fish curers, notice to be given.

Before any salt brought from any salt work shall be delivered to any *fish curer*, he shall give two days notice to the officer to attend and see the same weighed and delivered, and shall weigh and deposit it in his entered warehouse in the presence of such officer, who shall as soon as he is satisfied that the whole quantity originally consigned is actually delivered, give to such fish curer a certificate of the quantity thereof, and the day, name, and place of abode of the person to whom delivered, and also the name of the person from whom brought, and the number and date of the permit. s. 97.

Disposing of salt delivered to fish curers for any other purpose.

If any *fish curer* or other person to whom any salt shall be delivered duty free for *curing fish* shall sell, deliver, or give away any such salt, except to some other fish curer subject to the directions of this act, and for curing fish, or shall use or consume any such salt for any other purpose except for curing fish; or shall suffer or cause any such salt to be sold, delivered, given away, used, or employed contrary to the true intent and meaning of this act; he shall forfeit 40s. for every pound thereof, or 100l. at the election of the attorney general, or person who shall sue; and in default of payment, such offender shall be committed to the house of correction to hard labour for (not exceeding) six months. s. 98.

One fish curer may deliver salt to another fish curer on giving notice.

Provided that every fish curer who hath received any salt duty free for *curing fish* may deliver any part thereof to any other entered fish curer, upon notice thereof in writing being given to the proper officer within 48 hours after being so delivered, specifying therein the day when delivered, and the name and place of abode of the fish curer from whom and to whom delivered, such notice to be signed by such fish curers respectively. s. 99.

Fish curers receiving salt to be chargeable therewith.

And the *fish curer* to whom such salt shall have been so delivered as aforesaid shall be charged with the same, and if any dispute shall arise whether such salt shall have been so delivered, the proof thereof shall lie on the fish curer delivering the same. s. 100.

Fish curers to produce the fish

Every *fish curer* shall produce to the officer, perfectly cured, all fish by him so cured, and for which he intends to take credit

credit in his yearly account, and such officer shall thereupon take an account by the tale, gauge, weight, or otherwise, of the quantities and species thereof, and shall enter the same in a book; and if the fish produced be dried or unpacked cod, ling, or hake, such fish curer shall in the presence of such officer punch one hole through the tail of each fish; but if herrings, pilchards, or wet fish, or other fish packed in barrels or casks, then such officer shall brand each cask in some conspicuous part with the letters B. F. And every such fish curer before any such barrel or cask be produced to the officer shall brand on every barrel or cask in large, legible, and permanent characters his name, and the year when so produced; and if he shall produce any such fish in barrels or casks not so marked or holed in the tail as aforesaid, he shall forfeit all such fish, which may be seized by any such officer. *f. 103.*

cured to the officer.

And salt for curing fish shall be allowed at the following rates:

Rates at which salt for curing fish shall be allowed.

For every cwt. of dried cod, ling, or hake, 50 pounds of salt.

For every barrel containing 32 gallons of wet cod, ling, or hake, 56 pounds of salt.

For ditto 42 gallons of salmon, 36 pounds of salt.

For ditto 32 gallons of white herrings, 140 pounds of salt.

For every barrel containing 32 gallons of red herrings, 65 pounds of salt.

For ditto 32 gallons of clean shotten red herrings, 56 pounds of salt.

For every last consisting of 10,000 dried red sprats, 25 pounds of salt.

For every cask containing 50 gallons of pilchards or scads, 336 pounds of salt. 42 G. 3. c. 93. *f. 20.*

For 32 gallons of mackerel, 84 pounds of salt.

And so in proportion for any greater or less quantity.

The exemption of salt employed in curing fish from duty, is by 51 G. 3. c. 82. *f. 6.* continued to *Mar. 25, 1815.*

No salt shall be used in curing pilchards or scads more than twice; and in taking account of salt only once so used, credit shall be given to every fish curer for such salt, as containing of pure salt in the proportion of three parts in four of the whole quantity and no more; and every officer of excise shall make his computation according to such proportion. 42 G. 3. c. 93. *f. 21.*

No salt to be used in curing pilchards more than twice, &c.

And every barrel, cask, or other vessel in which fish, beef, or pork entitled to any bounty by this act shall be packed, shall be gauged according to the gallon *English* wine measure. 38 G. 3. c. 89. *f. 5.*

Barrels how to be gauged.

If in taking account of and balancing the stock of salt in the custody of any fish curer in the month of *May* as afore-

Where on taking stock a de-

deficiency shall be found.

aforesaid, there shall appear to be any deficiency in the quantity he received in the last preceding year, making an allowance for what he hath delivered to any other fish curer, and also in the proportion aforesaid, for salt consumed in curing fish and produced as aforesaid, in such case all the salt so deficient shall be deemed salt illegally disposed of or misapplied by him, and he shall forfeit 17s. for every bushel, to be paid to the commissioners of excise which shall be applied fifteen seventeenths to his majesty, and the remaining two seventeenths to officer of excise, who shall discover such deficiency. *f. 105. 49 G. 3. c. 81. f. 4.*

Foul fishery salt may be used for manuring land.

Whereas it sometimes happens that salt employed in curing fish after being repeatedly applied to the fish becomes so foul as to be entirely unfit for that purpose, which salt has heretofore in certain places and under certain restrictions been used in the manuring of land, it is enacted that the lords of the treasury may by special warrant, upon such conditions and under such restrictions as they shall think expedient, authorize the commissioners of excise to permit any entered *fish curer*, residing at any place where immediately before the passing of this act, foul fishery salt was usually sold for manuring land, to sell such of their fishery salt for that purpose as hath from repeated use in curing become so foul as to be utterly unfit to be used again for curing fish. Provided that if any person whether a fish curer or not, shall be convicted before one neighbouring justice of wilfully and knowingly selling or using or suffering any such foul fishery salt to be disposed of for any other purpose than that of manuring land, or of selling or using any salt for manuring land, except such dirty and foul salt as shall be totally unfit for curing fish, he shall for every such offence forfeit 100l., and for ever afterwards be excluded from the benefit of selling or using foul fishery salt for manuring land. *f. 106.*

Bonds and certificates not subject to stamp duty.

No bond or security taken for salt to be used in *curing fish*, nor certificate made out in relation of any such salt, shall be subject to any stamp duty. *38 G. 3. c. 89. f. 107. 39 G. 3. c. 65. f. 10.*

Salted fish, beef, and pork, may be exported.

Such *fish curer* or other person entitled to any such dried or wet ling or other fish aforesaid, which shall be *British* taken, and also to any *beef* and *pork* salted in *England* with salt for which the duties hereby imposed have been paid, may be exported by way of merchandise upon the terms herein specified. *38 G. 3. c. 89. f. 108, 9, 10, 11, 12, 13.*

Unshipping fish, beef, or pork, entered for exportation.

If any fish, beef, or pork entered or shipped for *exportation*, with intent to obtain the bounty hereby granted, shall be unshipped or laid on land, or put into any other vessel, (shipwreck, or other unavoidable accident excepted,) then over and above the penalty of such bond, all such fish, beef, and pork,

pork, or the value thereof, shall be forfeited together with the packages and also the vessels out of which and into which the same shall be taken or put; and the same may be seized by any such officer. *f. 114.*

When any dealer in or seller of salt, or other person shall have occasion to send or remove salt *coastwise*, such person on making oath before the proper officer of excise that all the salt so intended to be removed, was received into his custody with a legal permit, and that he believes the duty hath been duly paid or secured, and upon the delivery of a request note as herein directed, shall be entitled to a permit to accompany such salt so to be sent coastwise. *f. 82.*

Salt may be carried coastwise

The master of every vessel having salt or rock salt on board to be carried from one place in *Great Britain* to another, shall before he shall begin to unship the same produce and leave with the proper officer a permit, and shall make oath before such officer that to the best of his knowledge and belief no salt, &c. hath been put on board since such ship sailed from the place, at which the salt mentioned in such permit was shipped, and that he believes no salt, &c. hath been put on board, except that specified in such permit. *f. 83.*

Master before landing to produce a permit.

And every such master, having any salt, &c. on board, shall, when required by any officer of excise, cause the same to be weighed out of such vessel in the presence of an officer, who shall take an account thereof; and if such master shall neglect or refuse to leave with such officer such permit as aforesaid, or to make oath as aforesaid, or to weigh out of his vessel all the salt, &c. on board the same as aforesaid, he shall forfeit 100*l.* *f. 84.*

And shall cause such salt to be weighed.

The master or other person having the charge of any flat, barge, boat, or other vessel in which any salt, &c. shall be laden, before he shall remove any part thereof into any other such vessel, shall produce to the proper officer a permit for the same, and shall if required weigh such salt, &c. in the presence of such officer, on pain of forfeiting 100*l.* *f. 85.*

Removing salt out of one vessel into another.

All salt and rock salt imported from *Scotland*, without a legal certificate, testifying that all the duties payable in *Scotland*, have been paid shall be forfeited, together with the packages, ships, boats, and other vessels, waggons, carts, and other carriages, horses, and cattle employed in importing, or bringing, or removing the same, which may be seized by any such officer; and the person in whose custody such salt, &c. shall be found, or who shall be employed in removing the same, shall forfeit 50*l.* *f. 86.*

Importing salt from Scotland.

No salt, &c. shall be removed from *Scotland* to *England* by land, on pain of forfeiting the same, together with the pack-

Not to be removed by land.

packages, and also the waggons, carts, carriages, horses, and cattle employed in removing or bringing thereof, which may be seized by any officer of the customs or excise; and every person concerned in bringing or removing the same contrary to the directions of this act, shall forfeit 40s. for every pound weight thereof, or 100l. at the election of the attorney general or person who shall sue. *f. 87.*

Beef, &c. from Scotland.

By 49 G. 3. c. 81. Salted beef, pork, or bacon brought by land from *Scotland* to *England*, shall immediately on the arrival thereof in *England* be entered at the nearest excise office in *England*; on pain of forfeiting the same.

Oath to be made that it is the identical salt mentioned in the certificate.

The master of every vessel in which any salt or rock salt shall be brought from *Scotland* into *England*, shall immediately on his arrival at the place to which the same is consigned, and before he unships any part of the same, produce and leave with the proper officer a certificate under the hand of the officer in *Scotland*, testifying that the duties have been duly paid, and shall make oath before such officer that such salt, &c. is the identical salt, &c. mentioned in such certificate, and that no other salt, &c. has to his knowledge and belief been put on board since the salt, &c. mentioned in such certificate was put on board, and shall pay to the officer all the duties by this act imposed on salt, &c. brought from *Scotland* to *England* with such certificate, and shall forthwith weigh unship and deliver the same in the presence of such officer; and in default in each such case shall for every such offence forfeit 100l. together with such salt, &c. and the packages; and also the vessel; and the same may be seized by any officer of customs or excise. *f. 88.*

Glass makers may take salt for making mineral alkali, or flux for glass.

Any maker of *glass* may take rock salt from any warehouse belonging to any salt mine, or pit, or brine, or sea water for making *mineral alkali* or *flux for glass*, upon bond being given in double the duty on such salt, &c. that the same shall be so employed; such bond to be discharged upon oath of the proprietor, or manufacturer, or his agent being made before the collector, that all such rock salt, brine, or sea water, for which the same was given, was made use of in making such mineral alkali or flux for glass, and for no other purpose whatsoever. *f. 116.*

Entry to be made of work-houses, &c. for making the same.

Every person before he begins to make *mineral alkali*, or *flux for glass*, shall make entry in writing of every workhouse, warehouse, storehouse, room, and other place, and also of every utensil and vessel by him intended to be used therein, at the excise office of the district. And if any such person shall begin to make any mineral alkali or flux for glass, without making such entry, he shall forfeit 100l. together with the same, and all materials proper for making the same, together

together with the utensils and vessels used therein found in any place used for such purpose whereof no entry has been made. *f. 117.*

No such rock salt shall be delivered out of such entered warehouse belonging to any mine or pit, for the purpose of making *mineral alkali* or *flux for glass*, or shall be afterwards delivered at such works for such purpose, or be deposited in any warehouse or place belonging thereto, but in the presence of an officer, who shall make an entry in writing, containing the weight or quantity thereof, and the day when so delivered, and the name of the maker of glass to whom delivered, and for the use of what works, and to whom belonging. *f. 119.*

No rock salt to be delivered but in the presence of an officer.

In case the rock salt so brought to be stored in any such works for *alkali* or *flux for glass*, shall be less in weight or quantity than specified in the permit, the maker for whose use the same was delivered shall be answerable for the same. *f. 120.*

If less in quantity than specified in the permit.

If any maker of glass on whose account such rock salt shall be delivered as aforesaid, or if any other person shall use the same or any part thereof, or any acid materials to be produced therefrom, after being used in making such mineral alkali or flux for glass as aforesaid, for any other purpose, than that of making mineral alkali or flux for glass he shall forfeit 100l. *f. 121.*

Using rock salt delivered for making mineral alkali for any other purpose.

Any officer of excise may enter every workhouse and other place made use of by any such manufacturer of *mineral alkali* or *flux for glass*, made from rock salt, brine, or sea water; and if such manufacturer shall upon demand in the day time, (or in the night in the presence of a constable or other peace officer) refuse to permit such officer to enter therein, he shall forfeit 50l. *f. 122.*

Officers may enter warehouses.

Provided always, that nothing herein shall extend to impose any duty on such *Glauber salts* as shall be made by any glass maker in any of the processes of making mineral alkali or flux for glass, and which shall be *bonâ fide* expended and consumed in making such mineral alkali or flux for glass. *f. 123.* See however 47 G. 3. *sess. 2. c. 30. f. 2.*

Duty not to extend to Glauber salts.

And whereas salt is an essential ingredient in making *oxygenated muriatic acid* commonly used for bleaching linen and cotton, and allowing a drawback on salt used for that purpose would promote the manufacture thereof, it is enacted, that the whole duties now payable on salt of *British* manufacture shall be drawn back for all salt consumed in making any such oxygenated muriatic acid as aforesaid: Provided, that no such drawback shall be granted for more or other salt than shall be mixed with vitriolic acid, manganese, and water, in the presence of an officer, and in the proportion

Drawbacks to be made on British salt used in making oxygenated muriatic acid for bleaching linen.

portion of at least 20 pounds of vitriolic acid, 20 pounds of manganese, and 10 pounds of water to every 56 pounds of salt. Nor shall any such drawback be granted to any person not being a bleacher of linen or cotton nor unless he make entry in writing of every workhouse and other place intended to be used in making such oxygenated muriatic acid as aforesaid at the next excise office: Provided also, that any officer of excise may at all times by day or night upon request enter into any such workhouse and other place used by such bleacher, and by weighing, gauging, or otherwise take an account of all salt therein, and of the state of operation of such oxygenated muriatic acid. *f. 89.*

[By 47 G. 3. *sess. 2. c. 30. f. 1.* Divers allowances are further made on salt used by bleachers in making such acid.]

Officers not obliged to attend the mixing of salt at bleaching grounds oftener than once in seven days.

But no officer shall be obliged to attend the mixture of such salt and other ingredients oftener than once in every seven days, and excepting upon 48 hours notice in writing by such bleacher, specifying the day and hour when such mixture is to be made, and the quantity of salt intended to be mixed and mingled, and if he shall not begin to mix and mingle such ingredients in the presence of such officer within half an hour after such officer shall attend, such notice shall be void, and he shall not be obliged to attend again without a fresh and like notice. *f. 90.*

Officer may grant a certificate to the bleacher, whereupon he shall have an allowance of the duty, deducting $7\frac{1}{2}$ per cent.

Upon such officer's attending and seeing any quantity of salt not less than one bushel mixed as aforesaid, and upon receiving a permit for such salt, and being satisfied that the duties have been duly paid, he shall give to the bleacher entitled to receive the same a certificate specifying the quantity of salt so mixed, &c. which upon being produced to the proper collector, and making oath that all the salt mentioned in such certificate hath been *bona fide* used in making such oxygenated muriatic acid as aforesaid, for the sole purpose of bleaching linen or cotton, and that he believes the duties have been paid, and that no drawback hath been allowed or received, the said collector or the commissioners of excise shall thereupon allow to such bleacher the amount of the duty so paid and specified in such certificate, deducting at the rate of $7\frac{1}{2}$ per cent. for the increase in the weight of the salt by the moisture of the air. *f. 91.*

Owner of brine springs at Long Benton may make mineral alkali.

Provided, that the owners, proprietors, or occupiers of certain brine springs or salt water in *Long Benton* in *Northumberland* may make mineral alkali from the brine or water of the said springs at their works there, and also at *Newburn* in the said county; upon the conditions and according to the regulations herein contained, that is to say, that the owners &c. shall make entry in writing at the next excise office of every workhouse, warehouse, and other place and utensils

and vessel by them intended to be used in making or keeping such mineral alkali or any materials for making the same; on pain of forfeiting 100l. together with all the mineral alkali there found whereof no entry has been made: Provided also that such owner, &c. clear off the duty payable thereon at such times and under such penalties as herein directed. *f. 124.*

Any such officer may enter by day or night upon request every such workhouse or place used for making *mineral alkali*, and by weighing, gauging, or otherwise take an account of all the mineral alkali made or making therein.

Officers may enter warehouses and take an account.

f. 125.

If any such owner or occupier shall manufacture any common salt, or *Glauber* or *Epsom* salts, or shall knowingly have in his custody any common salt exceeding two bushels, or *Glauber* or *Epsom* salts exceeding one pound, the same shall be forfeited and may be seized by any officer of excise; and he shall also forfeit 500l. *f. 126.*

Penalty for having common salt or Glauber salt in his custody.

Provided, that nothing herein shall prevent the manufacture of *kelp*, *barilla*, or *flux for glass* made in *Great Britain* by the incineration of marine or other plants. *f. 127.*

Not to extend to kelp, &c.

Whereas it may sometimes happen that salt and rock salt may be lost by stress of weather, and also the vessel, it is enacted that in case any salt or rock salt for which the duties have been paid, or which shall have been delivered on bond duty free shall be lost by stress of weather or storms at sea, or by the accidental [or unavoidable casting away, sinking, or stranding of any flat, barge, boat, or vessel in which it shall be removing or transporting, or be taken by the enemy, 39 G. 3. c. 65. *f. 12.*] the owner or shipper may make application in writing for relief to the nearest justices at quarter sessions, or to the commissioners of excise in *London*, who may respectively receive the same and examine all parties, and on due proof of the fact by two witnesses (one of which shall be the master or mate of such flat, &c. if living at the time) shall grant their warrant to the collector of excise, requiring him in case the salt or rock salt lost be such for which the duties have been paid, to allow to the maker or proprietor the full amount of such duties; and if it have been delivered upon bond duty free, or rock salt upon the low duties for exportation, to cancel such bond: Provided, that such bond shall remain in force as to all which shall not be so proved to have been lost, and which shall not be particularly specified in such warrant: Provided also, that no such application for relief shall be proceeded upon nor warrant granted, unless the owner or shipper or some person on his behalf give notice in writing to the commissioners of excise in *London*, or collector of the nearest collection, *within one month* after

Where salt is lost the quarter sessions may grant relief.

such accident (happened), nor unless it be specified in such notice when and where the loss happened and by what accident occasioned; nor unless the name and place of abode of the owner or shipper, the time when, and the place where shipped, and the place to which consigned, and also the quantity shipped, be specified in such notice, and also whether it was salt for which the duty had been paid, or which had been delivered on bond, and the name of the flat, &c. and of the commander thereof. Nor shall such application be proceeded upon, nor such warrant be granted, unless it appear upon the face of the application, and be proved on oath that the storm or accident happened within six months immediately preceding; nor unless notice in writing of the time and place of hearing and determining the matter shall have become known to him (51 G. 3. c. 82. s. 5.) be given to the said commissioners if in *London*, or to the collector nearest to the place where such quarter sessions shall be held if heard in the country, at least six days before the day appointed for such hearing. s. 115.

The 51 G. 3. c. 82. s. 5. Provides that the indulgence allowed by that act can only be had where facts shall be proved shewing that the circumstances of the case prevented notice and application from being made, within the times in the 38 G. 3. and 39 G. 3. mentioned.

[By 49 G. 3. c. 81. s. 5. This is confined to losses on the coasts of *England*.]

No person concerned in salt works, to act as a justice in matters relating to salt.

No person being a maker, refiner, or proprietor of any mine, salt pit, salt, salt refinery, or salt works, or interested therein, shall during such interest act as a justice of the peace in any matter or thing whatsoever, which may anywise concern the execution of this or any other act relating to salt, but all things done by any such person shall be null and void. s. 128.

Value of salt to be taken as at *London*.

In all cases where it shall be necessary to ascertain the value of salt, the same shall be taken at the highest price at which the same shall sell for in *London*. s. 129.

Forging certificates, &c.

If any person shall counterfeit or forge, or cause so to be done, any certificate or debenture, with intent to defraud his majesty, he shall be guilty of felony, and be transported for seven years. s. 131.

Obstructing officers.

If any person shall resist, oppose, molest, obstruct, or hinder any officer of customs or excise in the due execution of his office, or shall by force rescue or cause to be rescued or attempt to rescue any seized salt, rock salt, ship, vessel, boat, horse, cattle, cart, or carriage, he shall for every such offence for which no penalty is particularly provided by this act forfeit 200l. s. 133.

If any person shall give or offer to give any bribe to any officer of customs or excise in order to corrupt him in the execution of his office, or to connive at or conceal any fraud relating to the duties on salt, whether such proposal be accepted or not, he shall forfeit 500*l.* *f.* 134.

Offering bribes.

And all fines, penalties, and forfeitures hereby imposed relating to the duties on salt may be sued for, recovered, levied, and mitigated as by the laws of excise (*a*) or in the courts of *Westminster*, and shall be applied half to the king (except where otherwise expressed) and the other half to him who shall sue. *f.* 136.

Recovery and application of penalties.

Provided, that nothing in this act contained shall extend to repeal or alter any act in force relating to the duties on salt immediately before the passing of this act, except so far as the same is revoked or altered or repugnant thereto, but all the provisions, regulations, penalties, and forfeitures thereby imposed (except as aforesaid) shall remain in full force. *f.* 140.

Former acts to continue in force except hereby altered.

And all powers of 12 C. 2. c. 24. shall extend to this act. *f.* 142.

12 C. 2. c. 24. to extend to this act.

And the lord mayor and aldermen of *London*, and the justices of the peace at their respective general sessions, may set, ascertain, and publish the price of salt to be sold or exposed to sale (and not intended for exportation) within their respective counties, cities, and places, and may alter the same as they may see occasion; and the prices so set or altered are to be observed by every person selling or exposing salt for sale. And if any person shall sell any salt (except for exportation) at any higher price, or refuse to sell at the price so fixed as aforesaid, he shall forfeit 20*l.* to be levied by distress by warrant of one justice; and in default of sufficient distress such justice may imprison such offender until he shall pay the same, to be applied half to the king and half to him who shall sue. *f.* 143.

Sessions may fix the price of salt.

By 47 G. 3. *sess.* 2. c. 30. *f.* 3. The master or person having the charge of any vessel coming into any place in *Great Britain*, and having on board any salted provisions other than for the sustenance of the seamen then on board, or any articles in the packing, curing, or preserving of which any salt is employed, shall before the unloading and landing of such articles respectively, cause to be thrown overboard and destroyed in the presence of the proper officer of customs or excise, all the salt which shall then be or shall have been so employed, and all other loose or foul salt which shall fall off from or be in or about such articles; and if he shall neglect

Masters of vessels to throw overboard and destroy salt which has been used for curing or preserving provisions or for other purposes;

(a) For which see *ante*, Sect. III.

or on his neglect or refusal he shall forfeit 100l. and the officer of customs or excise may destroy the salt. Such salt if clandestinely landed, forfeited;

and the person unshipping or landing the same, or aiding therein, or concealing or receiving such salt, forfeits 100l.

or refuse to throw overboard and destroy as aforesaid, he shall forfeit 100l.; and it shall be lawful for the proper officer of customs or excise, by himself, or with such assistance as may be necessary, to throw every part of such salt as aforesaid overboard, and destroy the same.

And by *f. 4.* Foul or other salt which shall have been employed in the packing, curing, or preserving, or shall have fallen off from or been in or about any such articles, and which shall be unshipped, landed, or delivered out of any vessel contrary to this act, shall be forfeited, together with the packages containing the same, and shall be seized by any officer of customs or excise; and if any person unship, &c. or cause, &c. or be aiding or assisting, &c. out of any vessel, any such salt, or shall hide any such salt so unshipped, &c. or shall receive into his possession any such salt so unshipped, &c. he knowing the same to have been so unshipped, &c. shall, for every such offence, forfeit 100l.

By 49 G. 3. c. 81. *f. 7.* Salt seized and put up to sale and not fetching the sum equal to the duty shall be destroyed, and the officer seizing to be rewarded with a sum not exceeding 5s. per bushel.]

Sect. V. (14.) Soap.

Officers for the duties on soap.

The commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers. 10 An. c. 19. *f. 5.*

Who only shall be permitted to make soap.

No person, within the limits of the head office of excise in London, shall be permitted to make any soap, unless he occupy a tenement of 10l. a-year, and be assessed to and pay the parish rates; and elsewhere, unless he be assessed to and pay to church and poor. 17 G. 3. c. 52. *f. 1.*

Soap makers to be licensed.

Every soap maker shall take out a license from the excise offices, for which he shall pay 2l., and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 20l. 43 G. 3. c. 69. *Sched. (A.) 24 G. 3. c. 41. fess. 2. f. 7.*

Persons in partnership.

But persons in partnership need only take out one license for one house. *f. 8.*

Importation.

By 43 G. 3. c. 68. *Sched. (A.)*, certain duties are laid on soap imported, as particularly set forth therein.

Exportation.

And upon the exportation of soap made in Great Britain and which hath paid the duties, the same shall be drawn back. 43 G. 3. c. 69. *Sched. (C.)* But no drawback shall be allowed on the exportation of foreign soap imported. 23 G. 2. c. 21. *f. 36.*

Home duty.

By the 43 G. 3. c. 69. *Sched. (A.)*, certain duties are imposed on soap made in Great Britain.

And

And certain allowances shall be made for soap used in the manufactures in *Great Britain, Sched. (C.)* (viz.)

Allowance if
used in manu-
factures.

For every pound of *hard cake soap*, or *ball soap* used in making cloths, serges, kerseys, bays, stockings, or other manufactures of sheep or lambs wool only, or whereof the greatest part of the value of the materials shall be wool, or in the finishing the said manufactures, or preparing the wool for the same.

Also for every pound of *soft soap* used in like manner.

And for every pound of *hard cake soap* or *ball soap* used in whitening of new linen in the piece for sale.

And for every pound of *soft soap* used in like manner.

And also for every pound of soap used on or before *June 24, 1806*, in preparing and finishing any manufactures from flax or cotton for sale, except such as shall be used in whitening new linen in the piece, for sale thereof.

No maker of soap shall set up, alter, enlarge, or use any boilinghouse, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties; on pain of 200*l.* 10 *An. c. 19. s. 6.* 47 *G. 3. sess. 2. c. 30. s. 6.*

Place of making
to be entered.

All soap, oil, tallow, and other materials for making soap which shall be found in any private boilinghouse, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, and the value thereof, and shall be seized by the officers for the duties on soap. *s. 19.*

And by the 5 *G. 3. c. 43.* Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty of clandestine making of soap, it is enacted that a summons left at the place where discovery shall be made of such offence, directed to the person who shall be prosecuted for keeping or having made use of any place for the making or keeping of soap, or the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or for using or having used any copper or other vessel for the boiling or making of soap without notice given by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name. *s. 19.*

Summoning
offenders.

Every person who shall make any *hard soap* [And by 32 *G. 3. c. 21.* the same is extended to every maker of soap of what kind or quality soever] shall at his own expence provide sufficient wooden covers (to be approved of in writing

Covers and locks
to be provided.

by the surveyor or supervisor) to every copper, pan, or other utensil, wherein he shall boil or make any hard soap; which vessels, with the covers thereto affixed, and also the pipes that convey the waste or salt lees from the said coppers, pans, or other utensils shall be locked and sealed down by the officer, as soon as the fire is damped or withdrawn, whenever any soap or any thing of a soapy quality shall be left therein; which said locks, and keys to the same, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor at the expence of the maker. And if any person shall make any hard soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings as aforesaid, or shall wilfully break or damage any such lock or seal or other fastening, he shall forfeit 100*l*. 5 *G. 3. c. 43. s. 15.* 12 *G. 3. c. 46. s. 7.*

Furnace doors,
&c. to be locked.

The cover and furnace door and ash-hole door of every copper, pan, or other utensil used by any maker of hard soap, shall be securely locked and sealed down by the officer, at all times except when the same shall be at work, or shall be opened for repairing the same, or for the inspection of an officer; and proper locks and keys and other necessary fastenings for securing the said covers and doors shall be provided by the surveyors and supervisors at the expence of such maker. And whenever such maker shall be desirous of opening such copper, pan, or other utensil, or the furnace or ash-hole door, he shall give if in *London* 12 hours, elsewhere 24 hours notice thereof to the officer, who shall attend to open such doors: And if by any device any person shall open such copper, pan, or other utensil or the furnace or ash-hole door thereof, after the same shall have been so locked and secured, or shall wilfully damage or hurt any such lock or other fastening, he shall forfeit 100*l*. 17 *G. 3. c. 52. s. 8.* 24 *G. 3. c. 48. s. 2. s. 9.*

Officers to enter
and survey.

The officers shall at all times, by day or by night, and without waiting for the presence of a constable, be permitted on request to enter the house, boilinghouse, warehouse, or other place used by any maker of soap, and by gauging, weighing, or otherwise take an account of the quantity of soap, and also of all materials for the making thereof, in the possession of such maker, and shall be permitted to stay in such house or other place so long as he shall think fit; and shall make a return thereof in writing to the commissioners, or whom they shall appoint, leaving a true copy, if demanded, with the maker; and if such officer shall refuse or neglect to leave such copy (after demand in writing. 12 *G. c. 28. s. 30.*) he shall forfeit 40*s*. And if any maker shall obstruct such officer he shall forfeit 50*l*. *s. 7.*

By the 17 G. 3. c. 52. When any copper, pan, or other utensil, or the furnace doors thereof, shall be secured as in this act aforesaid, the surveyor and supervisor or other superior officer shall between the hours of five in the morning and eleven in the evening be permitted on demand to enter every workhouse of such maker, and after entry to unlock and examine every such copper, pan, or utensil, and the doors thereof, and after such examination shall again lock and secure the same: And if any person shall obstruct the officer herein, he shall forfeit 100*l.* *f.* 9.

No maker shall have any private pipe or conveyance, by which any soap or materials making into soap may be conveyed from his copper, &c. into any place whatever on pain of 200*l.* for every pipe or conveyance. And the officer, in the day time and in presence of a constable, on request made and cause declared, may break up the ground in any soap house, or the ground near adjoining, or any wall, partition, or other place, to search; and if he finds any such pipe, or other conveyance, he may break up the house, wall, partition, or place through which the pipe shall lead, and break up or cut the same: And if any person shall obstruct the officer in such search, he shall forfeit 100*l.* 17 G. 3. c. 52, *f.* 10, 11, 12.

Private pipe or conveyance.

Provided, that if upon search no such pipe shall be found, the officer shall make good the ground, wall, or other place, or make satisfaction to the owner, to be adjudged by the two next justices; or such owner may bring his action for the damages. *f.* 12.

The maker shall once in every lunar month, perfectly cleanse every copper, pan, or other utensil by him used in the boiling or making of soap, and shall give three days' notice thereof to the officer: And when cleansed, the officer shall make search; and if he find any hole not before known, such hole shall be deemed wilfully made for the purpose of conveying away soap from the sight of the officer before an account had been taken of the same; and the owner shall be liable to the penalties for concealing soap (that is, he shall forfeit 500*l.* 1 G. 3. c. 36. *f.* 14, 15.), unless he shall prove that it was made by bursting or other accident since the last survey, and that he had given notice thereof to the officer who first came on survey after such accident happened. And if such maker shall neglect perfectly to cleanse his copper, pan, or other utensil so used as aforesaid, or to give such notice as aforesaid, or shall obstruct the officer in searching and examining, he shall forfeit 50*l.* *f.* 14.

Coppers, &c. to be cleaned.

No maker shall have any pipe or other conveyance from or to any copper or pan made use of in boiling or making soap, except one moveable pump for taking out salt or spent lees,

To have one moveable pump only.

lees, which pump shall be taken out of such copper or pan before locked down by the officer; and shall not have any cock or hole in the side, or curb, or bottom, or cover of such boiler or copper, except small holes not exceeding $\frac{3}{4}$ inch diameter on the cover to let steam through, nor shall have any part of the curb moveable, nor shall use any syphon, crane, or trinket, but shall take out all lees, soap, or other ingredients, by a pump or ladle only; on pain of forfeiting 500l. 24 G. 3. c. 48. *seff.* 2. f. 8.

Every maker of soap, before he shall charge his copper or boiler with any materials for making soap (or before he begins to work upon any making of soap). 11 G. c. 30. f. 33. if within the bills of mortality shall give 12 hours' (elsewhere 24 hours') notice in writing to the officer of the time and hour when he intends to begin; on pain of (100l. 24 G. 3. c. 48. *seff.* 2. f. 12.), (and on pain of 50l. in case of 11 G. c. 30. if this be not in reality the same as the provision of 24 G. 3. c. 52. f. 8.) for every time he shall begin to make without giving such notice. 11 G. c. 30. f. 33.

Putting lees or lye into the copper or other utensil shall be deemed a beginning to work upon and make such making, so as to subject him to the forfeiture. 11 G. c. 30. f. 34.

If the maker shall not begin in three hours after the time mentioned in such notice (in this act) the same shall be void; and if he shall begin without giving a fresh notice, he shall forfeit 100l. 24 G. 3. c. 48. *seff.* 2. f. 12.

As to the notice in 11 G. c. 30. f. 33. the beginning must be in 6 hours within the bills, and 12 hours elsewhere, if the copper or other utensil be locked or sealed down, the officer shall attend to unlock and open the same, after the maker hath given to him 12 hours' notice within the limits of the head office in *London*, and elsewhere 24 hours' notice, of such his intention. And if by any contrivance such maker shall open any copper, pan, utensil, or pipe before the same shall have been opened by the officer; he shall forfeit 20l. 5 G. 3. c. 43. f. 15.

No maker of hard soap shall light a fire under any copper, pan, or other utensil used in boiling of soap, or for cleansing his foul goods, or in preparing any materials for the making of soap, without first giving notice, if within the limits of the head office 12 hours, if elsewhere 24 hours, of his intention, on pain of 20l. f. 16.

Every maker of hard soap shall make use of regular square or oblong frames only, for the cleansing or putting his soap (whether perfect or not perfect) into, when taken out of the vessel where it was boiled and prepared; and the bottom, sides, and ends of every such frame shall be two inches thick at the least; and such frame shall not exceed 45 inches in length,
nor

Frames to be
made use of in
working.

nor 15 inches in breadth; of which frames he shall give notice in writing at the next office, before he shall use the same; all which said frames shall be marked and numbered by the surveyor or supervisor, at the expence of such maker; on pain of forfeiting, if he use any other sort of frame, or if the bottom, &c. be not as herein mentioned, or if he use any such frame without giving such notice, for every such offence respectively, the sum of 20l. *f. 17.*

If any stale or rotten soap or cuttings be put into the copper or pan, in presence of an officer, to be refreshed or new made; the officer shall make allowance of the duty, and certify the same upon his report. *10 Ann. c. 19. f. 28.*

Re-working
stale soap.

But if it shall be put into any making of soap, without giving to the officer 12 hours' notice in writing within the bills, and 24 hours' elsewhere, there shall be no allowance made for it. *11 G. c. 30. f. 37.*

If any officer shall falsely pretend that he had such notice when he had not, and shall make and certify such allowance, he, and also the maker, shall forfeit 10s. for every pound so certified. *f. 38.*

But no *hard* soap (whether perfectly made or not) after the same shall have been cleansed or put into the frame, shall on any pretence be returned or put again into the copper or other utensils for boiling or reworking, and if it shall be so returned, it shall be charged again with the duties. *5 G. 3. c. 43. f. 18.*

Soap not to be
returned into
the copper.

And the officer shall allow to the maker in his charge, one pound in every ten of such hard soap; which shall be a full compensation for all waste, losses, or damages. *f. 14.*

Any officer may as often as he shall think fit by gauging, weighing, or otherwise take an account of all tallow, oil, rosin, and grease of every kind, and of all materials for making soap, which any maker shall have in his possession; and such maker shall provide proper scales and weights, and assist in weighing and taking such account, on pain of 20l. And in case the officer shall find any decrease in any materials for making soap, and shall not receive a satisfactory account thereof, he shall charge the maker with the duties of such decrease, according to the rates following; (that is to say,) for every 14 hundred weight, or 210 gallons of oil missing, 20 hundred weight of hard soap.

Officer to charge
for materials
missing.

For every 13 hundred weight of rendered tallow missing, 20 hundred weight of hard soap.

For every 13½ hundred weight of kitchen-stuff and tallow missing, 20 hundred weight of hard soap.

For every 14 hundred weight of tallow, rosin, and oil missing 20 hundred weight of yellow, brown, or rosin, soap. *24 G. 3. c. 48. f. 2. f. 11.*

Every

Every soap maker shall, before he begins to charge his boiler or copper, weigh in the presence of the officer, all the materials with which he intends to charge the boiler or copper, and all such materials shall be put into the copper or boiler in the presence of the officer, and in case the quantity of hard soap afterwards produced therefrom shall be found by the guage in the frames to be less than ought to have been produced according to the rates aforesaid, such deficiency shall be charged with the duties thereupon, according to the rates before mentioned; provided, that if such boiler or copper shall have been charged with rough fat or rough kitchen grease, then 8lb. of rough fat shall be deemed equal to 7lb. of tallow, and 5lb. of rough kitchen grease to 4lb. of clean kitchen grease. *f. 13.*

Materials to be weighed.

And by 27 G. 3. c. 31. Every soap maker, when and as often as he shall be required by any officer, before he charge his copper or boiler with any materials for making soap, shall weigh such materials (except lye) in the presence of the officer, and put the same into such copper or boiler; on pain of forfeiting 50l. *f. 14.*

Removing soap unsurveyed.

No maker shall (on pain of 20l.) remove any soap of which no account hath been taken by the officer from where it was made, without giving the officer within the bills 24 hours' notice, and in other parts two days' notice, of his intention to remove the same. 10 An. c. 19. *f. 16.*

Soap unsurveyed to be kept separate.

The makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed for 24 hours' after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5l. *f. 17.*

Concealing.

If any maker shall conceal any soap or materials, he shall forfeit the same and also 500l. 1 G. 3. c. 36. *f. 14, 15.*

Privately making soap.

And by the 5 G. 3. c. 43. If the officer shall have cause to suspect that soap is privately making in any place; or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer by day or night, (but if in the night, in presence of a constable) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making of soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package: And the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100l. *f. 20.*

[By

[By the 47 G. 3. *sess.* 2. c. 30. s. 7. When any officer of excise shall discover that the making of soap is carried on in any boilinghouse, workhouse, storehouse, warehouse, shop, room, or other place, whereof no notice in writing shall have been given at the office for the duties on soap next to the place where such soap shall be made, and shall at the same time discover in such boilinghouse, &c. any person knowingly concerned in carrying on the making of such soap, the person so discovered shall forfeit 20l. over and above all penalties and forfeitures that the proprietor or maker of such soap, or the owner, renter, occupier, or possessor of such boilinghouse, &c. shall be liable to; and the officer and all other persons acting in his aid, may stop and detain every person so discovered, and convey him before one justice of the peace for the county, &c. wherein so discovered; and such justice shall on confession, or on proof, by the oath of one witness, convict the person so discovered, and he shall immediately on such conviction pay the said sum of 20l. into the hands of the officer who shall have conveyed such offender before such justice, to be applied as herein-after directed; and on such offender refusing to pay the same, the justice so convicting, shall, by warrant, commit him to the house of correction for the said county, &c. there to be kept to hard labour for two months, to be reckoned from the day of such commitment, and until he shall have paid the said 20l., or until the expiration of the said two months. And in case the persons so convicted shall be again discovered in any boilinghouse, &c. whereof no such notice as aforesaid shall have been given, and where the making of soap shall be so carried on, in anywise concerned in carrying on such making of soap, he shall upon the like conviction forfeit for such second offence 40l., and in default thereof shall be committed to the house of correction as aforesaid, there to remain during the term of four months, or until the said 40l. shall be paid.

And by s. 8. every owner or renter of any house, out-house, or other place in which any boilinghouse, &c. for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot ash, lime, or other materials proper to be made into soap, or any copper, furnace, or other vessel for the boiling or making of soap, shall, with his permission or knowledge be erected or used, without notice given thereof, shall forfeit 200l.: And every other person in whose occupation any house, &c. in which, &c. or any copper, &c. for the boiling, &c. shall be erected, &c. without such notice, shall be found, shall forfeit 200l.

Penalty on persons assisting in making soap privately.

First offence 20l.

Officers may arrest them and carry them before a justice who may convict and commit.

Second offence 40l. or four months imprisonment.

Owners or renters of houses where soap shall be privately made to forfeit 200l.;

and the occupiers of such houses shall forfeit 200l.

Hard soap makers not to use any soap frame whose sides and ends shall not be permanently fastened together, and which shall be less than 45 inches in depth, under the penalty of 50*l*.

And by *f. 9.* reciting, that whereas the provisions made by the laws now in force relating to the form and construction of soap frames, are not sufficient, it is enacted, that no maker of hard soap shall, for the cleansing or putting his soap (whether perfect or not perfect) into, when taken out of the utensil where the same was boiled, make use of any frame, the sides and ends of each and every of the lifts whereof shall not be permanently mortised and nailed, or permanently dovetailed and nailed together, nor make use of any frame of a less depth or height than that of forty-five inches, nor shall cleanse or put his soap, when taken out of the utensil where the same shall have been boiled, into any frame in any less quantity than to the depth in such frame of forty-five inches at the least; and if any maker shall for the purpose aforesaid make use of any other kind of frame, or shall cleanse otherwise than as above in this section mentioned, he shall for every such offence forfeit 50*l*.: Provided, that every such maker shall be at liberty to cleanse and put into one such soap frame as is herein-before directed to be used, the residue of any making of soap which shall remain after filling his other soap-frame or frames, to the depth of forty-five inches at the least, though such residue of soap should be of any less quantity than sufficient to fill such one soap-frame to the depth of forty-five inches.

Makers of soap cleansing any copper except between certain hours, or not completing and finishing the cleanse within a certain time, to forfeit 50*l*.

And by *f. 10.* No maker shall cleanse or take, or begin to cleanse or take, his soap from or out of any copper, &c. by him used for the boiling or making of soap, at any other time than between the hours of seven in the morning and six in the afternoon; and having begun to cleanse, or take his soap from or out of any such copper, &c. shall, within the space of four hours, from the time of his having so begun, cleanse and take the whole out of such copper, &c. on pain of forfeiting for every such offence 50*l*.

Soap makers not cutting up their soap into cakes or bars within a certain time, to forfeit 50*l*.

And by *f. 11.* so often as any maker shall have cleansed his soap into any frame, wherein such soap shall be of the depth of fifty inches or under, every such maker shall, within 120 hours after such soap shall have been so cleansed into such frame, cut or divide such soap into cakes or bars, and remove every part thereof out of such frame; and when any maker of hard soap shall have cleansed his soap into any frame wherein such soap shall be of the depth of upwards of fifty inches, he shall, within 168 hours after such soap shall have been so cleansed into such frame, cut such soap into cakes or bars, and remove every part thereof out of such frame, on pain of forfeiting for every such offence respectively 50*l*.]

Every barrel of soap shall contain 256 pounds avoirdupois; half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap, (except hard cake soap, and ball soap, 10 *An. c. 26. f. 111.*) shall upon making thereof be put by the maker into such cask, and none other. 10 *An. c. 19. f. 8.*

Measure of soap.

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5*l.* *Id.* and 12 *An. st. 2. c. 9. f. 19.*

No maker shall sell any hard soap, but in the form of cakes or bars, or what is called *ball soap*; and shall return all scraps and parings into the boiler in the presence of the officer immediately after the soap that has been put into the frames shall have been cut up for sale; on the penalty of 10*l.* 24 *G. 3. c. 48. f. 2. f. 14.*

Hard soap to be sold in cakes, and the scraps returned.

If any scraps or parings of hard soap shall be sold or sent out by any maker, or shall be found removing or removed by land or water; the same shall be forfeited, together with the casks and packages, and shall be seized by any officer of excise. And the maker who shall send out or sell the same, shall for every such offence forfeit 10*l.* 28 *G. 3. c. 37. f. 14.*

The maker shall weekly make entry in writing at the next office of all the soap by him made within each week, setting forth the weight, and what quantity was made at each boiling in that week; on pain of 5*l.* for every neglect. Which entries shall be on oath (or if a quaker, affirmation) of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath, within the bills, to be at the chief office of excise; and elsewhere, with the collector and supervisor. 17 *G. 3. c. 52. f. 3.*

Entry and payment of the duties.

And within one week after entry, the maker shall pay and clear off the duties, on pain of double duty; and after such default in payment, he shall not sell or deliver out any soap, until he hath paid off his duty, on pain of double value. *f. 4.*

Provided that no maker shall be obliged to go or send further than the market town where the soap is made, or the next market town, to make such entry or payment. *f. 5.*

Any person who shall knowingly receive, buy, or have in his possession any soap after the same shall have been removed from the place where it was made, and ought to have been charged with the duty, before the said duty hath been charged, (except such as hath been condemned as forfeited,) whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sort shall then bear in *London.* 26 *G. 3. c. 77. f. 10, 11.*

Persons having soap in their possession which hath not been charged with the duty.

Soap carried
coastwise.

Cocquets granted for shipping soap to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited and seized, together with the package. 23 G. 2. c. 21. f. 29.

Importation and
exportation.

No soap shall be imported otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master or person taking charge of the vessel to forfeit 50l. f. 27.

But on information brought against any such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

The officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

The officers of excise or customs may seize any soap with the package that shall be found in any vessel, or shall be carrying in any cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or other place, or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty, and if the party in whose possession the same shall be found shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5l. for every 100 pounds weight, and so in proportion for any greater or lesser weight; and also the goods and package shall be forfeited. 23 G. 2. c. 21. f. 30, 31.

If any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claim any property therein or not, forfeit 50l. for every hundred weight, together with the goods and package. f. 32.

Where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits,

then public notice shall be given by proclamation at the next market town on the next market day after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal or be removed by *certiorari*.

f. 33.

The maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10*l*. 10 *An. c. 19. f. 13.* Scales and weights.

And by 10 *G. 3. c. 44.* If he shall use insufficient scales or weights, he shall forfeit 100*l*.; but not to be prosecuted both on this and the former act. And by 28 *G. 3. c. 33. f. 15.* the same shall be forfeited, and may be seized by any officer.

The excise laws shall be in force for managing these duties; and the penalties (except where it is otherwise herein directed (*a*) —) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall sue. 10 *An. c. 19. f. 26.* 11 *G. c. 30. f. 39.* 24 *G. 2. c. 40. f. 29.* 43 *G. 3. c. 69. f. 4.* Power of the justices.

Where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 *G. 2. c. 21. f. 35.* Proof to lie on the claimer.

If the party is not satisfied with any judgment of the justices on the act of 23 *G. 2. c. 21.* above-mentioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). f. 37. Appeal.

On information on the said act of the 23 *G. 2.* the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. f. 38. Mitigation.

And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An. c. 19. f. 20.* 28 *G. 3. c. 37. f. 21.* Utensils liable.

And whereas doubts have arisen whether the provisions of the afore said act 5 *G. 3. c. 43.* extend to the makers of ball soap, it is declared that the provisions of the said act do extend to the makers of ball soap. 28 *G. 3. c. 37. f. 13.* 5 *G. 3.* to extend to the makers of ball soap.

(*a*) A particular method is directed for levying the penalties imposed by 23 *G. 2. c. 21*; but being the same as for *Candles* and *Starch*, it is unnecessary to repeat it here, being set forth at large, ante, this title, Sect. V. (4.)

Sect. V. (15.) *Spirituous Liquors.*

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the *Customs* in general.

Liquors derelict are by 42 G. 3. c. 159. f. 1. subjected to excise duties, and see this act, tit. *Tobacco*; in order more clearly to explain the matters under this head, it is proposed to arrange the same in the following manner;

(a.) *Matters relating to Foreign Spirits imported.*

- [4 W. c. 5. f. 8. — 1 An. fl. 2. c. 14. — 6 G. c. 21. f. 16, 17. f. 31, 32. — 8 G. c. 18. f. 13. 24. 25. — 11 G. c. 36. f. 1, 2. 10. — 12 G. c. 28. f. 6. — 9 G. 2. c. 35. f. 22. — 15 G. 2. c. 25. f. 1. 3—6. — 31 G. 2. c. 36. f. 5, 6. — 32 G. 2. c. 29. — 3 G. 3. c. 22. f. 5. — 5 G. 3. c. 43. f. 27—30. — 6 G. 3. c. 46. f. 9. — 17 G. 3. c. 52. f. 15. — 23 G. 3. c. 70. f. 1—6. — 26 G. 3. c. 70. f. 7. 10. — c. 73. f. 36. 58. — c. 77. f. 15—17. — 43 G. 3. c. 69. — c. 81. — 49 G. 3. c. 98.]

(b.) *Concerning Spirits made in England, and therein of Distillers, Compounders, and Rectifiers.*

- [7 & 8 W. c. 30. f. 15. — 8 & 9 W. c. 19. f. 10. — 10 & 11 W. c. 4. f. 3—8. — c. 21. f. 23. — 4 An. c. 12. f. 4. — 24 G. 2. c. 40. f. 18. — c. 73. f. 5, 6. — 33 G. 2. c. 9. f. 23. — 2 G. 3. c. 5. f. 4. — 12 G. 3. c. 46. f. 11—18. — 14 G. 3. c. 23. f. 2. — c. 73. f. 1. 3—13. — 19 G. 3. c. 50. f. 1—5. 8, 9. — 21 G. 3. c. 55. f. 34—39. — 23 G. 3. c. 70. f. 13—26. — 24 G. 3. c. 40. f. 20. — Sess. 2. c. 41. f. 1. 7. — 26 G. 3. c. 73. f. 3, 4. 9—18. — 20—22. 25—28. 31. 33, 34. 36. 38, 39. 41—45. 53. 57. 65. 69. — 26 G. 3. c. 77. f. 10, 11. 46. — 27 G. 3. c. 31. — 30 G. 2. c. 37. f. 2, 3. 6. — 41 G. 3. U.K. c. 97. f. 8. — 43 G. 3. c. 97.]

(c.) *Spirits made in England for exportation, or shipped as Stores, or carried Coastwise.*

- [3 G. c. 4. f. 17. — 6 G. 2. c. 17. f. 7, 8. — 33 G. 2. c. 9. f. 1, 2. 15, 16. 18. — c. 28. f. 1, 2. 6. 8. 16—18. — 2 G. 3. c. 5. f. 5—14. 17—19. 21, 22. 31—33. — 5 G. 3. c. 5. f. 20. — 6 G. 3. c. 46. f. 9. — 8 G. 3. c. 25. f. 7. — 27 G. 3. c. 13. — 28 G. 3. c. 46. f. 77. — 42 G. 3. c. 93. f. 7—12. — 43 G. 3. c. 69.]

(d.) *Spirits*

(d.) *Spirits made in England to be exported to Scotland, and in Scotland to be brought into England.*

[28 G. 3. c. 46. f. 35, 36. 41. 43, 44. 46—54. 57—61. 78.
— 33 G. 3. c. 61. f. 29. 31.—39 & 40 G. 3. c. 73. f. 3.
— 43 G. 3. c. 69. f. 5.—45 G. 3. c. 100.]

(e.) *Matters relating to Importers and Dealers in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.*

[7 & 8 W. c. 30. f. 13. — 12 & 13 W. c. 11. f. 17, 18. —
6 G. c. 21. f. 15. 18. — 8 G. c. 18. f. 11, 12. — 11 G.
c. 30. f. 3. — 12 G. c. 28. f. 1. — 2 G. 2. c. 28. f. 10. —
6 G. 2. c. 17. f. 10. — 9 G. 2. c. 23. f. 6—9. 11—16.
— 11 G. 2. c. 26. f. 1. 4. 5. 7. — 16 G. 2. c. 8. f. 9. 11.
12. — 17 G. 2. c. 17. f. 19—22. — 24 G. 2. c. 40. f. 6.
8, 9. 11—16. 21. 28, 29. — 26 G. 2. c. 13. f. 9.—32 G. 2.
c. 29. f. 2.—5 G. 3. c. 46. f. 22. — 13 G. 3. c. 56. f. 1.
4. — 19 G. 3. c. 69. f. 18—22. — 21 G. 3. c. 55. f. 29.
— 24 G. 3. c. 41. f. 2. f. 7. — 26 G. 3. c. 73. f. 54.—
27 G. 3. c. 30. f. 4.—28 G. 3. c. 37. f. 21. 30.—29 G. 3.
c. 63. f. 5. 7. 14. — 30 G. 3. c. 13. f. 38. — c. 37. f. 7.
82.—c. 38. f. 9. 10.—43 G. 3. c. 69. f. 4. 6—8.—c. 81.
f. 16, 17.

(a) *Matters relating to Foreign Spirits imported.*

By 43 G. 3. c. 69. *Sched. (A.)* and 43 G. 3. c. 81. several duties are imposed upon spirits imported. Duty on im-
portation.

And by 49 G. 3. c. 98. several duties of customs are imposed.

The said duties payable by the importers before landing.

To enable the gaugers the better to ascertain the proof of all foreign imported liquors liable to the duties of excise, it shall be lawful for the gaugers or other officers of excise at any time before the gauging, to take a sample not exceeding half a pint in the whole out of each cask or other package, containing foreign spirituuous liquors imported, without paying any thing for the same. Officers may
take samples. 32 G. 2. c. 29.

And any officer may take samples of foreign spirits, in the custody of any distiller, rectifier, compounder, or dealer, not exceeding four gallons, paying for the same at the rate of 13s. per gallon; and if any person shall obstruct such officer, he shall forfeit 100l. 26 G. 3. c. 73. f. 36.

If any person shall land or deliver out of any vessel or boat any *French* brandy before the duty be paid or secured, or without license from the proper officer so to do, he and every person aiding therein, or concealing the same when landed, Landing French
brandy without
paying the duty.

landed, shall not only forfeit the same, but also double value; and if any officer of the customs or excise shall connive thereat, or shall be concerned therein, or conceal the same, or not give notice thereof, he shall be incapable to hold any office in the revenue, and forfeit 500*l.* 1 *An. st.* 2. c. 14.

Selling on ship-board.

Provided that, in order to have an opportunity to sell the same on shipboard, it shall be lawful for the importer or proprietor of any foreign spirituous liquors to take, in the presence of a gauger or other excise officer, a sample, not exceeding half a pint, out of every cask or other package, whilst the same shall be on shipboard, and before landing, without paying any duty for the same. 32 G. 2. c. 29.

Excise officers may go on board.

The officers of excise may go on board and enter any ship or vessel, and search in like manner as the officers of the customs may do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 G. c. 30. f. 1.

Warrant to search.

If any officer of the excise have cause to suspect that any foreign brandy, rum, arrack, spirits, or strong water shall be fraudulently concealed in any place, entered or not entered, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion, he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels; and if any person shall obstruct such officer, he shall forfeit 100*l.* f. 2.

Who only may seize.

By a general clause in the 8 G. c. 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. f. 24.

Obstructing the officer.

And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavour to rescue them after seizure, or shall after seizure slave, or otherwise damage any cask or vessel; he shall forfeit 40*l.* 8 G. c. 18. f. 25. (continued; *vide ante*.)

Notice to be given of seizure.

But no person shall be entitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours after seizure; who shall on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit

mit from such officer of excise or supervisor, on pain of being re-seized. 12 G. c. 28. f. 6.

If any foreign brandy, arrack, rum, strong waters, or spirits of any kind shall be imported in any ship, vessel, or boat of 100 tons burden, or under (except only for the use of the seamen, not exceeding two gallons each;) such vessel with her tackle, &c. and also the brandy, &c. shall be forfeited. 5 G. 3. c. 43. f. 27.—Except rum or other spirits of the growth and manufacture of the *British* sugar plantations; which may be imported in any vessel of not less burden than 70 tons. 6 G. 3. c. 46. f. 9.

In what ships to be imported.

By 43 G. 3. c. 69. *Sched. (B.)* countervailing duties are allowed on spirits and compounds made in and imported from *Ireland*.

Importation from Ireland.

But to prevent clandestine landing of spirits from *Ireland*, if any brandy, rum, strong waters, or other spirits shall be entered or shipped for exportation from *Ireland* to any place, not within the same kingdom in any vessel under the burden of 100 tons (except only for the use of the seamen, not exceeding two gallons each;) the said vessel with the tackle and furniture, and also all such spirits, shall be forfeited. 5 G. 3. c. 43. f. 30.

And where any vessel of 50 tons or under being in part or fully laden with *brandy* shall be at anchor or hovering within two leagues from the shore, and not proceed on her voyage, wind and weather permitting, the commander of any man-of-war or armed sloop appointed for the guard of the coast, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all cases as ships hovering within the limits of any port. 6 G. c. 21. f. 31.

Ships hovering near the coast.

By the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having on board any foreign brandy or other spirits, in casks under sixty gallons (except only for the use of the seamen, not exceeding two gallons each) shall be found at anchor hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (unless in case of unavoidable necessity and distress of weather, of which the person in charge or command shall give notice to and make proof of before the chief officer of the customs at the port, immediately upon arrival in such port), all such spirits, with the casks and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not); and the same may be seized, or the value thereof sued for by any officer of the customs or excise. f. 22. And if such vessel do not exceed the burden of 50 tons, the said vessel

also, together with her tackle and furniture, shall be forfeited. 3 G. 3. c. 22. s. 5. See 48 G. 3. c. 84. s. 7.

Unshipping into boats in order to be landed.

If the master, purser, or other person having charge of the vessel shall suffer any brandy (or other uncustomed goods) to be put out of the ship into any hoy, lighter, boat, or bottom to be laid on land; he shall, besides the other penalties, suffer six months' imprisonment. 6 G. c. 21. s. 32.

In what casks to be imported.

No brandy shall be imported in any vessel not containing 60 gallons at the least: on pain of forfeiting the same, or the value. 4 W. c. 5. s. 8.

And no *geneva* or *rum* shall be imported in any vessel or cask, not containing 60 gallons at least (except only for the use of the seamen, not exceeding two gallons each) on pain of forfeiture. 5 G. 3. c. 43. s. 28.

Provided, that if it shall be made appear to the satisfaction of the commissioners of the customs that any rum, being the produce of any of his majesty's dominions in *America*, shall be imported from thence in small casks, without fraud or concealment, either for the use of the master in the voyage, or for the private use of merchants or traders importing the same, or designed as presents, and not by way of merchandize, they may, if they think proper, admit such rum to an entry, and cause the duties to be accepted instead of the forfeiture. s. 29.

Places of keeping to be entered.

Whereas the illegal importation of foreign spirits is greatly promoted by fictitious entries of storehouses and other places for keeping such liquors, by evil-minded and indigent persons, it is therefore enacted, that no seller of or dealer in foreign spirituous liquors, residing within the limits of the head office of excise in *London*, (not being a retailer thereof duly licensed) shall be permitted to make entry of any warehouse, storehouse, room, shop, cellar, vault, or other place for keeping any foreign brandy, arrack, rum, spirits, or strong water; unless he shall inhabit in a tenement of 12l. a year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and in no other part of the kingdom, unless he be assessed and pay to church and poor; otherwise he shall be liable to forfeit as dealing therein without entry. 23 G. 3. c. 70. s. 1.

And where any entry shall be made of any warehouse, &c. no other seller or dealer (not being a joint trader or partner with such seller or dealer) however qualified shall make entry of the same, or of any other warehouse, &c. within the same house; on pain of being subject to the like penalties as dealers without entry. s. 2.

Rum may be landed and warehoused before duty paid.

All rum or spirits of the growth or manufacture of the *British* sugar plantations (imported directly from thence) on entry made (within 30 days after report made by the master

or

or purser of the contents and loading of the ship, 31 G. 2. c. 36. *f.* 5, 6.) and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold (within twelve calendar months; and if it be not sold in that time, then to pay the duty at the end of twelve calendar months, 6 G. 3. c. 47. *f.* 4), according to the gauge taken at the time of landing and lodging in the warehouse. 15 G. 2. c. 25. *f.* 1.

If any rum or spirits be landed before entry at the custom-house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited,* or the value thereof. *f.* 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and who is the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars of all carried in or out, and when, and for whose use delivered, and every six months, or oftener if required, transmit an account thereof in writing, and on oath to the commissioners of excise, together with an exact account of how much is then in the warehouse, who shall in one month examine the said accounts; and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any public employment, and forfeit 100*l.* *f.* 4.

The rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper and the excise officer attending the warehouse a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. *f.* 5.

Delivering out
of the ware-
house.

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. *f.* 6.

The proprietor or importer may fix one lock on the warehouse and keep the key; and the excise officer may affix another, and keep the key; and the proprietor or importer may, in presence of the warehouse keeper or excise officer, at all reasonable times, view and take out as aforesaid. *f.* 7.

Warehouse
be locked.

And such excise officer may by day or night (but if in the night in the presence of a constable or other peace officer) upon one hour's previous notice having been given to such importer or proprietor, or left at his dwelling house, or with his known agent or servant usually intrusted with the

Officers may en-
ter and survey
and take sam-
ples.

keeping such key, enter into every such warehouse, and by tasting, gauging, or otherwise, take an account of all rum or other liquors found therein, and take samples thereof not exceeding half a pint in the whole out of each cask or vessel, paying (if demanded) after the rate of 3s. a gallon. And if any such importer or proprietor, or his agent, servant, or workman, shall, after such notice, hinder or refuse to permit such officer to enter any such warehouse to take such account, or samples as aforesaid, upon his offering to pay as aforesaid, he shall forfeit 200l. 26 G. 3. c. 77. s. 15.

Upon oath made by any person that he hath reason to suspect, or believe, that such proprietor or importer of rum or other spirits lodged as aforesaid, doth mean and intend without the privity, consent, and knowledge of the officer, in the night time, to go into such warehouse, or that such proprietor or importer, or other person, shall at any time actually be in such warehouse, without the privity or consent of such officer, one commissioner of excise within the bills, or one justice elsewhere, may issue his warrant requiring any officer of excise, with the assistance of a constable, or other peace officer, to enter such warehouse by force or otherwise; and if such proprietor or importer, or other person, shall hinder or refuse the said officer or his assistant, from entering such warehouse, or executing such warrant, shall forfeit 200l. *Id.* s. 16.

Officer finding
an increase or
decrease.

If any officer shall discover and find in such warehouse any *increase* of rum or spirits (except such as have been imported and lodged in such warehouse according to law) over and above the quantity found at the last preceding survey; or any *decrease* (other than such as hath been delivered out according to law, or by leakage or unavoidable accident,) below the quantity found at the last preceding survey; such increase or decrease shall be deemed and taken to have been made by means of the proprietor or importer having, by some contrivance, opened such warehouse not in the presence of the proper warehouse keeper, or other officer of excise, whose business it was to attend with the key, and to open the same. And in every such case, such proprietor or importer shall forfeit 500l. *Id.* s. 17.

If such proprietor or importer shall, by any device or contrivance, open the warehouse, except in the presence of the proper warehouse keeper or excise officer, he shall forfeit 500l. 17 G. 3. c. 52. s. 15.

Spirits remain-
ing above 12
months.

If any rum or spirits remain in the warehouse above 12 calendar months (6 G. 3. c. 47. s. 4.) without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendering the overplus to the proprietor or importer. s. 9.

Where

Where any such liquors shall be sold in any such entered place, the officer shall on request of the feller (without fee) give the buyer a certificate signed by him, (expressing the quantity, the name of the buyer and feller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 G. c. 21. f. 16.

Permit for removal.

No such brandy, arrack, &c. exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. f. 17.

If any person shall take out a permit and not remove the liquors accordingly, nor return the permit, he shall forfeit for every gallon treble value: And if upon such non-return there appear not a sufficient decrease in the stock to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50l. and in default of payment, three months' imprisonment. 11 G. c. 30. f. 10.

No foreign spirits or strong waters, although under one gallon, shall be received into the custody of any retailer without a permit, signifying that the duties were paid, or that they had been condemned; on pain of forfeiting the same and the cask or other vessel wherein found. 8 G. c. 18. f. 13. (continued; *vide ante.*)

And for the better preventing foreign spirituous liquors that have been illegally imported from being removed from the sea coasts into the stocks of entered dealers or others, no feller or dealer shall be allowed to take out more than one permit in one day to one person, except as therein-after is excepted; which permit shall be granted for the removal of no more than one cask or other package of any foreign spirituous liquors, of one kind or species, directed to one and the same person. And if any shall be found removing or removed contrary hereto, with or without a permit, the same shall be forfeited. 23 G. 3. c. 70. f. 3.

Provided, that several permits may be taken out and casks containing foreign spirituous liquors of the same kind or species sent to the same person the same day; so as each cask be sent under different permits, and by different conveyances. f. 4.

Provided also, that nothing herein shall prevent dealers from sending with one permit by one and the same conveyance any number of casks, containing 60 gallons each or upwards of the same kind. f. 5.

And if any foreign spirits, not being in casks of 60 gallons or upwards, shall be found removing, unless at the following times, that is, from *Sept. 29* to *March 25* yearly between the

the hours of 7 in the morning and 5 in the evening, and from *March* 25 to *Sept.* 29, between the hours of 5 in the morning, and 7 in the evening (except the same is carrying by a known common stage coach, waggon, or other stage carriage which usually travels out of those hours); the same shall be forfeited, whether accompanied with or without a permit. *f.* 6.

No foreign spirits or strong waters more than 60 gallons shall be brought to *London* by one permit, or by one conveyance, at the same time, from any part of *England* by land or water (except by way of *Gravesend* to the port of *London* in the ordinary course of commerce); on pain of being seized and forfeited. 26 *G. 3. c. 73. f. 58.*

When any dealer shall send a request note to a permit writer, he shall specify therein the quality or kind of such foreign spirituous liquors intended to be removed with each permit, the contents of the cask or other package, and whether the same is to be removed by land or water, and by what mode of conveyance; otherwise such request note shall be void, and no permit shall be granted thereon. 23 *G. 3. c. 70. f. 7.*

If any person shall counterfeit such permit, or give or receive any false permit, or alter any granted by the proper officer, he shall forfeit 500*l.* to be recovered in the courts at *Westminster. f. 10.*

By 48 *G. 3. c. 84. f. 7.* If any person shall offer for sale any brandy or other foreign spirits, not being licensed to deal therein, and not having a permit for the same, or if any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading either on foot, or with any horse or other cattle or otherwise, shall offer for sale any brandy, &c., although he shall have a permit for the same, the person, to whom such offer is made, may detain such person and seize all such brandy, &c., and carry the same to the next customs or excise warehouse. And carry the person so offering, before any one justice, who may thereupon require such person to enter into recognizance in manner directed by 45 *G. 3. c. 121. f. 2.* And such person shall thereupon be subject to all the provisions in the said act contained in relation to recognizances taken from persons seized as smugglers (and if the officer shall be a subject of his majesty, and a seaman, or sea-faring man, and capable of serving in his majesty's navy; may send such person to the custody of some officer of the impress service, by him to be dealt with according to the 47 *G. 3. f. 2. c. 66. f. 36, &c.*: or otherwise to be committed by such justice to prison, and prosecuted for the penalties and forfeitures incurred for such offence. And such brandy, &c. may be prosecuted in the name of the person
wh o

who so stopped and seized the same, in like manner as if seized by an officer of the customs or excise. And after condemnation of the goods or commitment of the offender, the persons having seized such goods and detained such persons so offering the same for sale, shall be entitled to 5l., if a moiety shall not exceed 5l., and if a moiety of such value shall exceed 5l., then a moiety of such value.

(b.) *Concerning Spirits made in England, and therein of Distillers, Compounders, and Rectifiers.*

[By several acts of parliament duties are imposed upon and regulations made respecting the manufacture of a sort of spirits called *Maidstone geneva*, made by *George Bishop of Maidstone*, and which is extended to *Sir W. Bishop and Co.* which being local only, it is thought unnecessary to insert here.]

£. s. d.

By 43 G. 3. c. 69. *Sched. (A.)* every distiller or maker of low wines or spirits for sale, or exportation, within *England*, shall take out a license, which shall be charged with the yearly sum of - 10 0 0

Distillers, rectifiers, and retailers to be licensed.

And every rectifier of spirits within *England*, shall pay for such license a duty of - 5 0 0

Such license shall be renewed annually ten days before the end of the year, on pain of forfeiting, if a corn distiller, 200l.; if a melass distiller or rectifier, 30l. 24 G. 3. c. 41. *sess. 2. s. 1. 7.*

And no person shall be deemed a rectifier or compounder, who shall not have an entered still capable of containing in the body thereof, exclusive of the head, 120 gallons; nor unless such still shall have suitable tubs and worms affixed thereto, and shall be *bonâ fide* used for rectifying *British* spirits for sale. 26 G. 3. c. 73. *s. 15.*

Who shall be deemed rectifiers or compounders.

By the 19 G. 3. c. 50. Every maker, distiller, rectifier, and compounder shall cause to be painted in durable, large, and legible characters, over the outward door of every still-house, storehouse, or other place used by him for making or keeping *British* made spirits, the words *Distiller, Rectifier or Compounder of spirituous liquors* (as the case may be); on pain of forfeiting for every such place not having such words so painted 100l. *s. 6.*—And if any person shall put up such words without having duly made entry of all the places by him used for making or keeping such spirits, he shall forfeit 200l. and be subject to the several penalties and forfeitures to which persons making spirituous liquors for sale without making entry are subject. *s. 9.*

Certain words to be put up.

If any distiller, &c. or dealer shall receive, buy, or procure any *British* made spirits (except at the public sales of condemned spirits

Buying *British* spirits.

spirits by the commissioners of excise) of any person other than a maker, &c. not having the said words painted over such door; he shall forfeit 50*l.* *f.* 7. — And in this case, either the buyer or seller informing against the other he shall be discharged of his own penalty. *f.* 8.

By 21 *G. 3. c. 55.* The penalty is increased to 500*l.* But not to be prosecuted both by this and by any former act; and the seller informing against the buyer shall be discharged of his own penalty. *f.* 37, 8, 9.

Entry of houses
and vessels for
distillation.

By the 19 *G. 3. c. 50.* No person shall be permitted to make entry of any workhouse or place, or of any still or utensil for making, distilling, or keeping of low wines or spirits, unless he shall occupy a tenement of 10*l.* a year, and be assessed for the same in his own name, and also pay to the parish rates where he shall reside. And no entry shall be of any avail to any person not so qualified, nor for any longer time than he shall be so qualified. *f.* 3.

By the 21 *G. 3. c. 35.* In order to prevent private distillations, every person who shall make or distil any low wines or spirits, whether for sale or not for sale, shall be deemed a common distiller for sale, and shall enter his still and vessels by him used for the making of wash, low wines, or spirits at the next office of excise; and every person making or keeping any wash fit for distillation of low wines and spirits, and having in his custody any still, shall also be deemed a common distiller for sale, and liable to the several duties, and to the penalties, &c. imposed by acts relating to distillers. *f.* 34, 35.

Every person occupying any house, whether he be the owner or renter thereof or not, who shall knowingly permit any private back or still to be set up or used in any part of such house, or any building thereto belonging, for the making of wort, wash, or other liquors for distillation of any low wines or spirits, without entry having been made thereof, and being duly licensed, shall be subject to the like penalties, &c. as persons *using* such stills. 26 *G. 3. c. 73.* *f.* 53.

No common distiller or maker of low wines, spirits, or strong waters, for sale, shall set up any tun, cask, washbatch, copper, still, or other vessel, for brewing, making, or keeping any worts, wash, low wines, spirits, or strong waters, nor alter or enlarge the same, nor shall have any of the same private or concealed, nor any private or concealed warehouse, storehouse, cellar, or other place for brewing, making, laying, or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20*l.*, for every tun, &c. or other place so erected or set up, altered or enlarged,

larged, kept private or concealed, and he in whose occupation any of the same shall be, shall forfeit 50*l.* 8 & 9 *W. c.* 19. *f.* 10.

By the 24 *G.* 2. *c.* 40. Every distiller or maker of low wines shall, ten days before he distils or makes any spirituous liquors, make entry at the next office of excise of every still, copper, tun, washbatch, cask, or other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters, and also of the vessels used for brewing, holding, or keeping the after-runnings or feints from the second extraction (which last-mentioned vessels shall not at any one time exceed two in number,) and also of all such new utensils as he shall make use of for the purposes aforesaid; on pain of 50*l.* for every such still or other vessel used and not entered. *f.* 18.

By 26 *G.* 3. *c.* 73. Every distiller shall, four days before he begins to brew any corn or grain, or mix any other materials for making of wash to be distilled into low wines, make entry, (according to a schedule annexed to the act) at the next excise office, of all coppers, &c., and vessels which he shall make use of for the brewing, mixing, fermenting, working, distilling, holding, laying, or keeping any wort, wash, low wines, or any spirits or feints; and shall in such entry insert the day when he intends to begin to brew or mix, and shall specify the use and purpose to which each such copper, &c. is intended to be applied; and the same shall not be used or applied to any other purpose than is specified in such entry; on pain of forfeiting 100*l.* together with all such wort or other liquor found in any such copper, &c. which may be seized by any officer of excise. 26 *G.* 3. *c.* 73. *f.* 3.

By the 21 *G.* 3. *c.* 55. No person shall make use of any vessel, washbatch or other utensil, nor any other room or place, for making wash for the distillation of low wines and spirits, without first giving notice at the next excise office; on pain of 50*l.* for every vessel, room, or place so made use of without notice. *f.* 26.

No distiller, or maker, or compounder, or rectifier shall be allowed to withdraw his entry, whilst any duty is depending, or any utensils for brewing, fermenting, or distilling, shall be standing.—But nothing herein shall extend to prevent the changing of any entry from the name of one owner to a subsequent owner; or from an entry for making spirits for home consumption to spirits for exportation, or from making spirits from one sort of materials to another sort; so that every such new entry be made on the same day on which such former entry was withdrawn, otherwise such former entry

Withdrawing or changing the entry.

entry shall continue in force. 23 G. 3. c. 70. s. 25, 26.
26 G. 3. c. 73. s. 4.

Size of the stills.

By the 2 G. 3. c. 5. No person who shall make or rectify any spirits for sale, or who shall sell or deal in any sort of spirituous liquors, shall have in his custody or possession, or if any other person in trust, or for the use of him, any still or number of stills, unless such still if a single one, or such stills taken together if more than one, shall contain at the least 100 gallons; on pain to forfeit for every such still 100l. And such stills as shall contain separately less than 100 gallons shall be all placed in one room or workhouse; on pain to forfeit for every such still not so placed, 100l. s. 4.

By the 14 G. 3. c. 73. Every still for distilling any sort of fermented worts or wash, and commonly called the wash still, shall contain at least 400 gallons in the body of the still, exclusive of the head; and every still for distilling low wines, commonly called the low wine still, shall contain in the body thereof, and exclusive of the head, at least 100 gallons; on pain of forfeiting for every still containing respectively a less number of gallons, 100l. s. 2.

By the 19 G. 3. c. 50. Whereas the duties on low wines and spirits are greatly diminished by means of small stills privately made use of, it is therefore enacted, that every person keeping any wash fit for distillation, and having in his occupation, possession, or custody any still, the cubic contents of which when the head is on will amount to two gallons, proof thereof being made by the oath of one witness before one commissioner of excise or one justice, shall be deemed a common distiller for sale, and liable to the survey and duties. s. 1.

The same to be marked.

And the distiller shall shew to the gauger or officer who surveys, every still or other vessel entered, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller, without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20l. 24 G. 2. c. 40. s. 18.

Wash-backs,
how to be constructed.

Every fermenting *wash-back* shall have a hole or dipping place in the top thereof, and shall be so constructed that the officer may conveniently take his dip or gauge at such hole; and shall be so placed that the top thereof shall be beneath the level of the charging cock of the wash-still; on pain of 200l. 26 G. 3. c. 73. s. 5.

When fresh
limed.

After the wash-back shall be quite empty, and before any such wash-back shall be fresh limed, such distiller shall give, if within the bills, four hours, elsewhere eight hours' notice

in writing to the officer of excise, before he shall begin to lime the same; and if he shall not begin within one hour after the time mentioned in such notice, the same shall be void, and he shall give a fresh notice; on pain of 50*l.* *Id.* §. 6.

By the 10 & 11 *W. c.* 4. §. 7. If any officer of excise shall have cause to suspect any private still, back, or other vessel, spirits, low wines, wash, or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion, he may in the day-time, and in presence of a constable, by warrant from such justice to be directed to such officer of excise, break open the door or any part of such suspected house or place, and enter and seize the same, and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited and sold at the next general day of sale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200*l.* And by the 10 & 11 *W. c.* 21. he shall incur this forfeiture, whether he shall make any such claim or not. §. 23.

Private Still.

By the 19 *G. 3. c.* 50. If any officer of excise shall at any time discover any private or concealed still, back, or other vessel for the making, preparing, or keeping of wash, low wines, or spirits, or other materials preparing for distillation, he may (that is, without applying to a justice,) seize such still, back, or vessel, and all such low wines or spirits, and either detain them in the house where found, or remove them to the next office of excise; and if they shall not within ten days next after the seizure, be claimed by the owner, the same shall be forfeited; and the proprietor of any such private or concealed back, still, or other vessel, or the person in whose custody the same shall be found, shall forfeit for every place wherein such private still, back, and other vessel shall be found, and also for every such still, back, and other vessel found therein, the sum of 200*l.* And if any person shall obstruct the officer in seizing or removing after seizure, he shall forfeit 100*l.*

By the 23 *G. 3. c.* 70. Whereas notwithstanding the many laws to prevent the private distillation of low wines and spirits, evil-minded persons do privately make spirits; if any officer of excise shall know, or have cause to suspect, that any private or concealed still, back, or other vessel, spirits, low wines, wash, or other materials preparing for distillation, are set up or kept in any house or place; and if the same be within the limits of the head office in

London,

London, shall make oath thereof before a justice, or two of the commissioners, and elsewhere before a justice of the county or place, setting forth the ground of his suspicion, they may by their warrant empower such officer, by day or night, (but if in the night, in presence of a constable, or other peace-officer,) to break open the doors, or any part of such house, and seize the same, and either to detain them there, or remove them to the next excise office; and if not claimed in ten days, the same shall be forfeited, and the proprietor or person in whose custody they shall be found shall forfeit for every place in which such private still, &c. shall be found, and also for every such still, &c. 200*l.*; and any person obstructing such officer in the search, shall in like manner forfeit 200*l.* And when any officer shall discover any private or concealed still, back, or vessel, and shall at the same time discover in the room or place where such private still, &c. shall be found, any person knowingly aiding in carrying on such distillation, he shall forfeit over and above all other penalties, 30*l.*; and the officer may arrest such person so discovered, and convey him before a justice, who may convict upon confession or oath of one witness, and immediately upon conviction, the person convicted shall pay 30*l.* into the hands of the officer; and upon non-payment, the justice shall by warrant commit him to the house of correction, to be kept to hard labour for six months from the day of the conviction, not to be discharged until payment of the 30*l.* or expiration of the six months. In case of a second conviction, he shall pay 60*l.* and be committed for 12 months, or until payment of the 60*l.* *f. 13, 14.*

But if on breaking open any such door or house no such private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner, to be adjudged by the two next justices (12.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall forfeit 200*l.* 10 & 11 *W. c. 4 f. 8.*

Removing
spirits privately
distilled.

And for the more effectually preventing the removal of spirits that have been privately distilled from the places where made to the houses of rectifiers and compouncers, the officers may seize all horses, carriages, and boats employed in removing the same from one part of the kingdom to another, unless they be accompanied with regular permits. 23 *G. 3. c. 70. f. 15.*

No distiller shall have or keep any private pipe, stop-cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or other vessel to another, or from any such back or other vessel to his still, or into any other place, nor shall have or keep any hole in any back, or wash-batch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100l. for every such pipe, stop-cock, conveyance, and hole. 10 & 11 W. c. 4. f. 3. Private cocks and pipes.

The excise officer, in the day time, and in presence of a constable, or other peace-officer, on request made and cause declared, may break up the ground in any distilling-house, or the ground near adjoining, or any wall, partition, or other place to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, through or into which any such pipe or other conveyance shall lead, and may break up or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe or other conveyance, may convey any wash or other liquor fit for distillation, out of one back or vessel into another, or from any such back or vessel, into any still, or into any other place. f. 4.

If no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise: and if any person obstruct such officer, he shall forfeit 100l. f. 5.

But any distiller may use any pipe, stop-cock, or other conveyance above ground, in open and public view, from one end to the other for letting his wash out of the coolers into his backs or wash-batches, and for conveying the wash or worts out of the back or wash-batch into his public still. f. 6.

No distiller shall have any fixed pipe or other conveyance leading to or from any still, except one charging-pipe to each still; nor any conveyance leading from such still, except the discharge-cock to each still belonging; on pain of 200l. 23 G. 3. c. 70. f. 23.

No distiller, maker, rectifier, or compounder, shall have any pipe communicating with the worm belonging to any still, on pain of 100l. 26 G. 3. c. 73. f. 13.

No distiller shall have any pipe, conveyance, or opening, leading to his wash-still, except the known charging-pipe leading from his known wash-back, and the same shall

empty itself in a shute, open trunk, or vessel which shall not be more than six feet distance from the still, and shall be at least two feet long, one broad, and not more than two feet deep, from which shute, &c. the conveyance pipe into the wash-still shall be straight, and not concealed from the view of the officer, nor of a larger size than six inches diameter in the clear; on pain of 200*l.* for every such pipe, &c. *Id.* *f.* 17.

Holes or openings to be in the breast of the still.

Every distiller, rectifier, and compounder, shall make (with the approbation of the surveyor or supervisor) a hole or opening in the breast of every still, that the officers may take guages and samples; which hole or opening in the wash-still shall not be more than five inches square, and so contrived that the officers may take guages thereof with a cork and rule; and in every other still, not being a wash-still, the hole or opening shall not be less than one inch and an half in diameter, and so contrived that the officers may take samples from the still with a phial, to be drawn perpendicularly through the same. And if he shall presume to distil, rectify, or compound any spirits before such holes or openings be made, he shall forfeit 50*l.* 14 G. 3. c. 72. *f.* 3. 5.

Trunks and other close vessels to be demolished.

For the preventing of frauds being carried on by means of trunks and other close vessels set up by distillers for receiving wash and other materials fit for distillation from the wash-backs and other utensils, before the same is pumped up into their stills, every distiller, whether for sale or exportation, having any such trunk or other close vessel, shall demolish or convert the same into open vessels; and if he shall hereafter erect any such, he shall forfeit 100*l.* 23 G. 3. c. 70. *f.* 16.

Pipes at the end of still-worms to be demolished.

To the end that the officers may be able to taste and examine the quality of the low wines and spirits coming from the still, every distiller, &c. shall cut off or take away all pipes fixed to the end of the worms belonging to their stills; and if he shall fix any there for the future, he shall forfeit 100*l.* 23 G. 3. c. 70. *f.* 16.

Locks on the still-heads.

Every distiller, rectifier, and compounder shall at his own expence provide and affix sufficient fastenings (to be approved of, in writing under the hand of the surveyor or supervisor) to the head of every low wine-still, wash-still, wash-pumps, and charging-cocks, through which worts or wash are conveyed into such still; which said still-heads, charging cocks, and wash-pumps, shall from time to time be securely locked and sealed by the surveyor, and the locks and keys for securing the said still-heads, charging-cocks, and wash-pumps, shall be provided by the surveyor or supervisor, at the expence of the distiller. And if the distiller

distiller shall presume to distil before he hath affixed such fastenings, he shall forfeit 50*l*. 12 G. 3. c. 46. f. 10. 16. 14 G. 3. c. 73. f. 1.

The holes or openings in the breast of the still shall in like manner be locked and secured, under the same rules, regulations, and penalties as for securing the still-heads. 14 G. 3. c. 73. f. 3. 5.

Locks on the holes or openings.

Every distiller and maker for sale, shall, at his own expence, provide and affix sufficient locks, keys, and fastenings, (to be approved of in writing under the hand of the surveyor or supervisor,) to the discharge-cock of every still, and the officer shall be permitted to lock and secure such discharge-cock at any time when such still shall be at work; and every distiller shall, when required by the general surveyor if in *London*, elsewhere by the surveyor or supervisor of the division, immediately repair and alter according to such requisition all such locks and fastenings; and in default thereof, shall for every neglect or refusal forfeit 50*l*. 14 G. 3. c. 73. f. 5. 26 G. 3. c. 73. f. 9, 10.

Locks on the charging and discharging cocks.

The discharge-cocks shall be so fixed in the body of each still, as that the officers may have convenient access to the same; and for that purpose every such discharge-cock shall be continued in a straight line from the body of the still, and not project more than three feet from the body of the still, nor more than 18 inches from the brick-work or other materials whereon the still shall be placed; on pain that every distiller offending in the premises shall forfeit 100*l*. 23 G. 3. c. 70. f. 17.

The keys of every charging and discharging-cock shall be made in manner following; that is, the key shall be made with an open eye or hole in the top part thereof, which eye shall be of such a size as to be capable of receiving a lever sufficient to turn the cock; and such charging-cocks and discharge-cocks shall not have any hole or place of discharge, but at the mouth only; and no grate, strainer, or other thing shall be placed before the mouth of any such charge or discharge-cock; on pain that every distiller offending herein shall forfeit 100*l*. f. 18. 26 G. 3. c. 73. f. 11.

No distiller, maker, rectifier, or compounder shall river any key into any charge or discharge-cock, so as to prevent the officer from taking out and examining such key, on the penalty of 50*l*. 26 G. 3. c. 73. f. 12.

No distiller, &c. shall have any cap or covering upon any cock belonging to any still, pipe, back, or other vessel, so as to prevent the officer from seeing and easily examining such cock; on pain of 50*l*. *Id.* f. 14.

Locks on the
furnace door.

Every distiller, maker, rectifier, and compounder shall, on the like pain, at his own expence, provide and affix sufficient locks, keys, and fastenings (to be approved of in like manner) to the furnace door of each still; and the officers shall be permitted to lock and secure the said furnace doors, at any time when the stills are not at work.

14 G. 3. c. 73. s. 4, 5.

Penalty of open-
ing or -damaging
such locks.

If any person shall, by any means or device, open any fastening on the holes or openings in the breast of the still, or any discharge-cock, or furnace door, after the same shall have been locked or secured by the officer; or shall wilfully hurt or damage any lock or other fastening; he shall forfeit 200l. s. 12.

Ladders to be
provided.

The distiller shall provide proper ladders, whereby the officers may get to the top of each still, and shall by himself or some person on his behalf assist such officer in setting up the ladder and examining the contents of each still, and taking still guages thereof; on pain of 200l. for each offence. 23 G. 3. c. 70. s. 21.

Notice of taking
in materials.

The distiller or maker of low wines or spirits, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50l. 24 G. 2. c. 40. s. 20.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5l.

Notice of begin-
ning to work.

When any distiller or maker of low wines and spirits from *corn or grain*, whose still-house is under the survey of the *London* officers, or is situate in *London* or *Westminster*, or within any other city, shall be desirous of opening, or charging his still; he shall give to the officer notice in writing at least four hours before he intends to charge his still: But if he intend to open or charge it any time between twelve in the night and six in the morning, he shall give notice at least twelve hours before he intends so to open his low wine-still or wash-still. And where the still-house is not situate in *London* or *Westminster*, nor under the survey of the *London* officers, nor in some other city, he shall give at least twelve hours' notice in writing at the

next

next office of excise, or to the officer of the district of such his intention of opening or charging his still. And if he shall not begin to charge his still at the hour mentioned in such notice, or within two hours after, the notice shall be void; and he shall be obliged to give a fresh notice, before the officer shall be bound to open the head of such still, or the said charge-cocks, or wash-pumps, so locked as afore-said. 12 G. 3. c. 46. *f.* 12, 13.

The like notice shall be given, when such *corn* distiller shall be desirous to have the furnace door of his still unlocked. 14 G. 3. c. 73. *f.* 6.

When any distiller or maker of low wines or spirits from *melasses* or other materials, not being *corn* or grain, or any rectifier or compounder of spirits, shall be desirous to charge his wash-still, he shall within the bills give to the officer notice in writing four hours at least, and elsewhere eight hours, of the particular hour or time of the day when he intends to charge such still. And when he is desirous to have the furnace of his still opened, he shall if within the bills give 12 hours' notice, and elsewhere 24 hours', of the particular hour or time of the day or night when he intends to have the same opened; which notices for charging the wash stills of such distillers of *melasses* or other materials not being *corn* or grain, and also for opening the furnace doors, shall be given at the times following; *viz.* from *Sept.* 29 to *Mar.* 25 yearly between the hours of seven in the morning and five in the evening: and from *Mar.* 25 to *Sept.* 29 between the hours of five in the morning and five in the evening:—And if such distiller shall not begin to charge his wash-still at the time mentioned in such notice, or within one hour after, the notice shall be void, and he shall be obliged to give another like notice before the officer shall be obliged to attend. *f.* 6.

Every distiller and maker, in the notice of his intention to charge his wash-still, shall express the particular wash-batch or wash-batches from which he intends to charge his still, describing the number and marks thereof; otherwise the notice shall be void. And if he shall charge his wash-still from any wash-batch not mentioned in such notice, or shall take out of any still any feints or spent wash contrary to the directions of this act, he shall, for each offence, forfeit 100*l.* *f.* 7, 8.

For the further preventing frauds, the officer shall be permitted to take samples of the wash in any wash, back, or other vessel, not exceeding 12 gallons in the whole out of each such wash, back, or vessel; paying for the same at the rate of 1*s.* 6*d.* a gallon; and if the distiller shall obstruct or hinder him, he shall forfeit 100*l.* 23 G. 3. c. 70. *f.* 22.

Officers may
take samples of
wash.

Distiller making
use of improper
materials.

If any corn distiller, or maker of low wines or spirits from corn or grain, shall make use of any melasses, coarse sugar, honey, or any composition or extract of sugar, in the brewing, making, or preparing wash for distillation or in making or extracting low wines or spirits, or shall receive any of the said materials into his custody any quantity of melasses, coarse sugar, honey, or any composition or extract of sugar, exceeding 10lb. weight; he shall forfeit for every offence 100l. And if any servant or other person shall assist therein, *he* shall forfeit 20l., and in default of payment shall suffer three months imprisonment. *s. 24.*

If any distiller, in preparing his grist for wash, in order for distillation, shall use more wheat than in the proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 50l. 33 G. 2. c. 9. *s. 15.*

Officer to attend
and survey.

And the officer shall from time to time attend, according to the notice given. 12 G. 3. c. 46. *s. 14.*

Provided, that where notices are given by more than one distiller, rectifier, or compounder, each of them expressing the same hour or time for the officer to attend, it shall be sufficient if he attend at the workhouse of any one of them according to the notice, or within one hour after time mentioned therein. 14 G. 3. c. 73. *s. 11.*

As soon as the officer shall be at the still-house, the distiller shall turn the discharge cock of every wash-still, that the officer may be satisfied that such wash-still is really empty; and then, and not before, the officer shall open the stills, cocks, and pumps so locked and secured, and shall continue in the still-house all the time that such wash-still shall be charging; and when the same shall be fully charged, shall immediately lock and secure as before all the still-heads, wash-pumps, and charging-cocks, and shall leave them so locked and secured at all times. 12 G. 3. c. 46. *s. 13.*

And so often as it shall be found necessary to have such still-heads or charge-cocks or wash-pumps open for repairing or mending the same, the officer shall attend all the time the workmen shall be employed in such repairing; but shall lock the same every night so soon as they shall leave off work; and shall attend at six o'clock each morning, whilst the repairs are doing, to open the said stills, charge-cocks, and pumps. *s. 14.*

No such distiller or maker shall have any pipe or conveyance to the low wine-stills from any other vessel or utensil, except the known and entered low wine cask; on pain of 100l. for every such conveyance. *s. 15.*

If any person shall open any still-head, charge-cock, or wash-pump, after the same shall have been locked and secured as aforesaid, before the same shall have been opened

by the officer of excise; or shall wilfully hurt or damage any such lock or other fastening; he shall forfeit 200l. *f. 18.*

By the 14 G. 3. c. 73. Whenever the distiller or maker shall be desirous to light a fire under the still, and to have the furnace door opened, the officer shall attend according to the notice given, and open the same. *f. 4.*

And the officer shall be permitted to take still gauges, as well of spent wash and feints, as of the charge of the wash-still, at any time after the still is charged, and before it comes to work; and also to take samples of the same at any time after the still is charged, and before it comes to work, and also after the still is off, paying if demanded after the rate of 1s. 6d. a gallon for the wash, and 4d. a gallon for spent wash and feints. And if, in taking such gauge or sample, he shall discover that any wash hath been put into any still except the known wash-still, or into the wash-still without such notice as aforesaid; or shall find any increase in such still more than can be accounted for by the compare with the decrease from the wash-batch expressed in the notice; or if, on comparing the quantity of low wines charged with the spent wash remaining in the wash-still, he shall find a greater proportion than could arise from the quantity of wash taken account of in the wash-batches pumped into the wash-still; such increase shall be deemed to be made from some wash-batch not mentioned in the notice, and the officer shall charge the distiller with double duty from the presumptive charge; and no allowance shall be made to him for any feints, water, or other liquor, on any pretence put into the wash-still, but such as shall have been put therein in the view of the officer. *f. 9.*

If the officer shall discover at the still-house, in any still other than the known wash-still, any wash put into or mixed with the low wines or spirits in such still, every distiller, rectifier, or compounder offending therein, shall forfeit 100l. *f. 10.*

If any person shall obstruct any officer in the execution of this act, he shall forfeit 100l. *f. 13.*

By the 23 G. 3. c. 70. Whenever the officer shall have received notice for opening the furnace door of any still belonging to any rectifier or compounder, and shall attend for that purpose, such officer shall not on any pretence open the furnace door of any such still, but of such as are at that time fully charged, nor until he hath examined the contents of such still, and hath seen the head put on and ready to be locked down; nor shall such officer, when attending on any such notice at the still-house of any such rectifier or compounder, be obliged to continue there more than one hour at a time; and if such rectifier or compounder shall not

within that time have charged the still or stills mentioned in that notice, and put on the head of the still, so as they be ready to be locked down, he shall be obliged to give another notice before the officer shall be obliged to attend again to open the furnace door. *f. 20.*

Removing or
concealing wash,
&c.

No wort, wash, tilts, or low wines in the possession of any distiller or maker shall be removed from his entered distillery, nor concealed in any place whatever, on pain of forfeiture; and such distiller, and the person employed to remove, or who shall receive the same, shall severally forfeit 10s. for every gallon thereof, over and above such forfeiture. *26 G. 3. c. 73. f. 20.*

By *f. 11.* of the *42 G. 3. c. 93.* The officer of excise may from time to time, gauge and take account of all wash, &c. prepared or preparing for the extracting of low wines and spirits in *England*, and if he shall find any deficiency in the quantity of such wash, &c. which had been before found or gauged, such officer shall charge him with the duty on a quantity of fermented wort or wash, &c. of the same kind of materials, as the said wort, &c. consisted of, or was preparing or prepared from, equal to the quantity deficient; and the distiller shall pay the same.

No wort, wash, or tilts, or other liquor for the distilling of low wines or spirits for home consumption, shall be put into the still, or removed from the back or vessel wherein it was fermented, until the same shall have been gauged; on the penalty of 200l. for every such offence, and double duty, *26 G. 3. c. 73. f. 16.*

Officers to keep
an account and
give credit, &c.

The officer shall keep an exact account of all wash, &c. whereon the new duties are imposed, and shall for every 100 gallons of wort or wash brewed from malt, corn, grain, or tilts, or mixture therewith, give the distiller credit for 20 gallons of spirits of the strength of one to ten over hydrometer proof; for every 100 gallons of cyder, perry, wash, or other liquor made or brewed from any other kind of *British* materials, 15 gallons; for every 100 gallons of wort or wash from melasses, or sugar, 22 gallons; if from foreign refused wine, or foreign cyder, or wash prepared from foreign materials except melasses and sugar, 20 gallons of the strength aforesaid. And if such officer on casting up the stock of any such distiller or maker, (except he be also a rectifier) at the strength aforesaid, shall find the quantity of spirits contained in the stock to exceed the quantity for which he is entitled to credit, (making proper allowances for spirits for which permits have been granted,) every such excess shall be taken to have been occasioned by wort, wash, tilts, or other liquor not duly charged; and such excess shall be forfeited, and may be seized by any officer; and the person

son in whose stock, such excess shall be found, shall forfeit 50l. *Id. f. 25, 26.*

Officers may take samples of wort, &c. before conveyed into the wash-still, not exceeding 12 gallons at any one time from each cooler, wash-back, or other vessel, paying 1s. 6d. a gallon for the same. *Id. f. 18.*

Officers may take samples of wort.

Every distiller and maker for home consumption shall, before he begins to draw off any low wines from the wash-still, charge the same with wort or wash made from malt or corn, or melasses, or sugar, or with cyder, perry, or other liquor on which the duties have been charged in the proportion of not less than three parts in four of the whole quantity such still, including the head, is capable of containing; and every distiller, &c. for exportation before he shall begin to draw off any low wines for exportation from such wash-still, he shall charge the same with such wort or wash in the proportion of not less than four parts in five. And the same shall be worked off within 24 hours from the time of taking the account of the charge of such still; on pain of 200l. *f. 21.*

Manner of charging and working off wash stills.

All low wines shall, within 12 hours after run off from the wash-still, be conveyed into the low wine still; and shall within the next 12 hours be drawn off and distilled into spirits; on the penalty of 10l. an hour. *Id. f. 22.*

The officer shall every three months, if required, take an account of the stock of all distillers and rectifiers; and if any unfair increase shall be found, the same shall be forfeited and may be seized; and the person in whose stock such excess shall be found shall forfeit 50l. *f. 27, 28.*

Officer to take stock every three months of distillers and rectifiers.

Every rectifier shall mark the quantity and strength of mixed spirits on the outside of the cask, upon 12 hours' notice given him by the officer, and in default thereof, or if untruly marked, the same shall be forfeited, and also the casks, and may be seized, and such rectifier shall also forfeit 50l. *Id. f. 33.*

Rectifiers to mark the quantity and strength of spirits.

No distiller or maker shall sell or send out any spirits for home consumption of a greater strength than one to ten over hydrometer proof; and no rectifier or compounder (whether a maker or not) shall sell or send out any *British* brandy, *British* rectified spirits, *British* compound, or other *British* spirits, of a greater strength than one in eight under hydrometer proof; and no distiller, maker, rectifier, or compounder, or dealer in spirits, shall sell or send out any *foreign* spirits; or have in his possession any foreign and *British* spirits mixed together, except shrub, cherry, or raspberry brandy, of a lower degree of strength than one in six under hydrometer proof; on pain of forfeiting the same, together with the casks, which may be seized by any officer. *f. 31,*

Strength of spirits.

By

How to be ascertained.

By 27 G. 3. c. 31. made perpetual by 41 G. 3. U.K. c. 97. f. 8. it was enacted that all spirits should be deemed and taken to be of the strength denoted by *Clarke's* hydrometer. But by the 43 G. 3. c. 97. the lords of the treasury are empowered to order and direct that the use of *Clarke's* hydrometer should be discontinued for this purpose, or for any other relating to the revenue of customs or excise, and that any other hydrometer specified in any warrant of the lords of the treasury should for the time specified in such warrant, be used in lieu thereof; and during the continuance of such order, all spirits shall be deemed of the degree of strength of which such hydrometer shall denote; and all rules, &c. relating to *Clarke's* hydrometer shall be applied to such hydrometer specified in any such warrant.

Spirits in the custody of a dealer not a rectifier.

All rectified spirits which shall be found in the custody of any dealer, not being a rectifier or compounder of *British* spirits (except raw spirits or spirits of wine received by permit) if stronger than one in eight under hydrometer proof, shall be forfeited, and also the casks, and may be seized. 26 G. 3. c. 73. f. 34.

Officers may take samples of spirits.

In order the better to examine the strength and quality of such spirits, any officer may take samples thereof not exceeding four gallons respectively, paying after the rate of 7s. a gallon for *British* spirits, and 13s. a gallon for foreign spirits; and if any person shall obstruct such officer, he shall forfeit 100l. *Id.* f. 36.

Casks to be marked and gauged.

All fixed casks used for keeping such *British* spirits shall be entered at the proper office of excise, and gauged, on pain of 100l. and forfeiture thereof, and all liquor contained therein: And moveable casks used for sending out or keeping such spirits shall have its full measure marked on some conspicuous part thereof; on pain of 50l. for every default. *Id.* f. 38.

Every distiller or rectifier shall, on 12 hours' notice in writing from the officer, fill up his moveable casks that are not then full, (except one cask of each sort of spirits which may remain in ullage,) within such 12 hours', that an account of his stock may be taken; and shall separate the different sorts of spirits, and keep the same separate for six hours' next after, to enable such officer to take an account with greater certainty; on pain of 100l. *Id.* f. 39.

To be filled up, that an account may be taken.

After the duties of excise are charged on wash made for extracting spirits, by 26 G. 3. c. 73. f. 69. if any part of the wash is lost by accident (as by bursting of the vessel) the manufacturer cannot be relieved from the respective proportion of the duty as for an overcharge. For the duty attaches as soon as the officer has gauged the wash, and ascertained the quantity, after which the commodity is at the entire risk of the distiller; and this is so well understood, that it is

frequently the subject of insurance against accidental losses. The very point in question was decided in favour of the crown by the court of exchequer, in *Liptrapp's case*, E. 34 G. 3.: and it is a point of great importance to the revenue to have it ascertained, that when once the duty has attached upon any commodity, the public have no concern with any subsequent loss or deterioration to which it may be subject in the hands of the manufacturer. It was the policy of the law to establish this rule, in order to prevent the numerous frauds which were formerly practised. *R. v. B. Sikes.* 7 T. R. 56.

All *British* spirits of the third extraction, or which have been twice distilled from low wines, and had flavour communicated thereto, shall be deemed *British* brandy; if no flavour has been communicated thereto, the same shall be deemed *rectified British spirits*. And if of the second extraction, or once distilled from low wines, the same shall be deemed *raw British spirits*. And all *British* spirits distilled with juniper berries, carraway seeds, anise seeds, or other seeds or ingredients used in the compounding of spirits, shall be deemed *British compounds*. And all *British* spirits of a greater strength than one to two over hydrometer proof shall be deemed *spirits of wine*. *Id.* s. 44.

Denomination of spirits.

And for making unto rectifiers and compounders an allowance for that increase by water, sugar, syrup, or fruit, which is necessary to render their spirits fit for consumption, there shall be allowed permits for sending out any number of gallons, not exceeding the rate of 150 gallons of *British* brandy, rectified *British* spirits, or compounds, for every 100 gallons, of raw *British* spirits received from any distiller (not being a rectifier) of the strength of one to ten over hydrometer proof, or which they have made at that strength. 30 G. 3. c. 37. s. 2.

Allowance for increase by water, &c.

The officers shall take an account of the stock of rectifiers and compounders every three months at least; and if any increase in quantity shall be found, unless received by permit, at the strength aforesaid, with the allowance of 50 gallons on every 100 gallons so made or received, computed at the strength of one in $3\frac{2}{3}$ under hydrometer proof, a quantity equal to the quantity so found in excess shall be forfeited, and may be seized; and such person shall also forfeit 50l. s. 3.

Account of stock of rectifiers and compounders to be taken every three months.

If any rectifier or compounder shall sell or send out any *British* spirits or compounds of a greater strength than one in five under hydrometer proof, the same shall be forfeited, and treble the value thereof, or 50l. in the whole, at the option of the person who shall sue; and the same may be seized,

Strength of spirits to be sent out.

seized, together with the casks and vessels containing the same. *f. 6.*

Officer to charge for materials missing.

The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn, or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one-fourth part of the same wash so decreased shall amount unto, and also with so much proof-spirits or spirits of the second extraction, as three-fifth parts of the said low wines so charged shall amount unto, and also upon any decrease of wash made from cyder or perry, may charge such distiller, upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one-fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one-half part of the same low-wines or spirits of the second extraction shall amount unto.

4 *An. c. 12. f. 4.*

When the still has done working, the head shall be taken off.

Every rectifier and compounder shall take off the head of each still, as soon as the same shall have done working; and it shall in no case be put on, until it shall be again charged and ready to work; nor until the officer shall have examined the quality of the spirits then in each such still; on pain that such rectifier or compounder offending herein shall forfeit 100*l.* 23 *G. 3. c. 70. f. 19.*

Entry and payment of the duties.

The distiller shall weekly make entry of all wash by him used for the making of low wines and spirits within each week, on pain of 10*l.*; and within a week after shall pay off the duties, on pain of double duty. 19 *G. 3. c. 50. f. 4, 5.*

Carrying out of the still-house.

No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sept. 29, to Mar. 25*, yearly, between five in the morning and eight in the evening, and from *Mar. 25, to Sept. 29*, yearly, between three in the morning, and nine in the evening, on pain of 10*l.* 7 & 8 *W. c. 30. f. 15.*

Permit for removal.

All permits for removing *British* spirits, for home consumption, shall correspond with the request notes, and shall be delivered with such spirits to the buyer, on forfeiture of the same to such buyer, and double the price thereof agreed for including the duties; and such buyer may be admitted to prove that such spirits were delivered without a lawful permit: But if it shall appear at the hearing that the seller took out a permit to remove such spirits to such buyer, and had

had a suitable decrease, the same shall be adjudged to have been sent out and delivered with a lawful permit.—Provided that no buyer shall avail himself of such forfeiture, unless complaint is made within 14 days after the delivery of the spirits. 26 G. 3. c. 73. s. 41, 2, 3.

No person shall send out any *British* spirits mixed with foreign spirits above the quantity of four gallons, on pain of forfeiting 50*l*. *Id.* s. 57.

If any distiller, maker, rectifier, compounder, or retailer of spirits, shall be convicted before the commissioners, or one justice, of fraudulently making or having in his possession any spirits, either *British* or foreign, without having received a legal permit with the same, and that such offence was knowingly and wilfully committed, which must be set forth in the conviction; every such offender (over and besides all other penalties) shall forfeit his license, and the same shall be void, and no new license shall be granted to him for one month. *Id.* s. 45.

If any person shall knowingly receive, buy, or have in his possession, any *British* spirits after the same have been removed from the place where made, and where they ought to have been charged with the duty, before the said duty hath been charged, (except such as have been condemned as forfeited,) whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sort shall then bear in *London*. 26 G. 3. c. 77. s. 10, 11.

And no maker or rectifier shall receive into his custody any raw *British* spirits in any cask less than 100 gallons; and no distiller or rectifier, or dealer in spirits, shall receive any *British* brandy, compounds, raw spirits, or spirits of wine, but between five in the morning and seven in the evening, from 25th *March* to 29th *Sept.* inclusive; and between seven in the morning and six in the evening from 30th *Sept.* to 25th *March* inclusive; on forfeiture thereof, and also the casks, which may be seized, and also 50*l*. *Id.* s. 46.

(c.) *Spirits made in England for exportation, or to be shipped as stores, or carried coastwise.*

By 2 G. 3. c. 5. Every distiller intending to make or distil spirits for exportation shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation, make a particular entry at the next office of excise, of every still, copper, ton, wash-batch, cask, or other vessel, which he shall

Mixed spirits above four gallons, not to be sent out.

Fraudulently making or receiving spirits without a permit.

Persons having *British* spirits in their possession which have not been charged with the duty.

Times in which spirits are to be received, and size of the casks.

Entry of houses and vessels for making spirits for exportation.

shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-running or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, stillhouse, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards from time to time during the continuance of such entry give or leave notice in writing at the said office of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also from time to time during the continuance of such entry give or leave notice in writing at the said office of excise or with the said officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100*l.* for every offence. And if after such entry so made he shall not begin and proceed to brew or mix his materials as aforesaid on the day mentioned in such entry, or within four hours afterwards; or having given such notice shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards, such notice shall be void; and if he shall proceed without fresh entry or notice respectively, he shall forfeit the like sum of 100*l.* *f. 7.*

Provided that nothing herein shall extend to permit or authorize any distiller to give notice or make entry of his intention to make spirits for exportation, whose wash-still will not contain 1600 gallons, and the spirit or low wine-still 800 gallons. *f. 8.*

Neither shall any distiller be permitted to distil spirits for exportation, although he may have made entry as aforesaid, unless he shall actually have distilled into spirits all the wash and low wines in his custody for making of spirits for home consumption, at least 48 hours before the day mentioned in such entry. *Id.*

Provided, that when any distiller shall be desirous of distilling any spirits for home consumption, and shall have actually distilled into spirits all the wash, low wines, and feints in his possession for the making of spirits for exportation, and such spirits shall be locked up in the warehouse as

Entry for exportation may be withdrawn, and an entry made for home consumption.

here-

hereinafter is directed; he may withdraw his entry for exportation, and be at liberty to make a fresh and like entry for making spirits for home consumption; and after six days from such entry made he may begin to brew or mix materials for wash to be distilled into spirits for home consumption; and if he shall begin contrary hereunto, he shall forfeit 200*l.* *f. 9.*

Manner of making and warehousing for exportation.

No wash that shall be brewed or mixed for the extracting of spirits for exportation shall be pumped up into the still, or otherwise removed from the back or vessel wherein the same was fermented, but in the presence of an officer; and such distiller shall run or draw off his low wines immediately from the still into entered vessels only, and continue them therein, so that the officers may take a true gauge of such low wines; and such distiller shall provide a proper cask which shall be duly entered and gauged, into which the spirits shall immediately run from the still, which cask shall be sufficient to contain the whole produce of spirits to be extracted from each still when made up to the proper strength such spirits are required to be; and when the whole quantity of spirits shall be collected in such cask from each still, such distiller shall immediately make up such spirits in the presence of the officer, to the strength of one to six under hydrometer proof: And a true gauge of such spirits so made up shall then be taken by the officer. And the said spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse to be provided and kept by the distiller, and duly entered at the proper office of excise; which spirits shall be kept there separate from all spirits made for home consumption; and no spirits for home consumption shall be put into the same warehouse; and such warehouse shall be secured under three locks, one to be provided by the distiller, and the other two by the officer of excise at the expence of the distiller; whereof one key to be kept by the distiller, another by the supervisor, and the third by the officer of excise, until the spirits shall be delivered out for rectification, or afterwards for exportation; which warehouse shall be secured to the satisfaction of the supervisor signified under his hand. And if any distiller for exportation shall act contrary to these directions; or shall obstruct the officer in gauging, or in taking samples, or in trying the proof of the spirits (which gauges, samples, and trials of proof the officers shall make as often as the commissioners shall direct, the samples to be returned when the commissioners shall find it expedient to give directions for that purpose,) or shall open any of the locks or doors in the absence of the officer, or make any way into such warehouse, or remove any part of the partition between the warehouse for exportation and any adjoining

adjoining place, or make any addition to or any way alter the same, without notice to the supervisor and his consent in writing first had; or shall remove any of the said spirits from the locked warehouse to any other warehouse for exportation, before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal, or suffer to be removed or concealed, any wash or low wines for making spirits for exportation, or any such spirits, whether raw or rectified, either before the same are put into the warehouse or afterwards; he shall in every such case forfeit 500*l.* *f. 10.*

But this shall not hinder any maker of spirits for exportation from sending such spirits out of his locked warehouse to any other distiller; provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home consumption, for the due exportation thereof, within three months; and provided leave in writing be obtained from the commissioners; and four hours' notice thereof at least be given to the officer, that he may receive the same into such distiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: And such distiller shall thereafter be liable to the same penalties for breach of directions, as the maker would have been. *f. 11.*

To prevent distillers from working in the absence of the officers, every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work, and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the still is at work. *f. 18.*

No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehouse in order to be rectified, or when rectified and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours' notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be sent coastways, and to whom and to what port, and whether for merchandize or stores. And the supervisor or officer shall attend and see the quantity taken out, and take an account

Taking out of
the warehouse
for rectifying, or
exportation.

of the same. And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100*l.* *f.* 12.

When any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask, as is before directed to be provided and entered for the containing of spirits immediately distilled from low wines; and when the whole quantity of spirits designed to be made into brandy shall be collected into such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to six under hydrometer proof, at which strength all spirits are to be exported; and a gauge of such spirits so made up shall then be taken by the officer, who shall keep an account thereof; and such spirits shall immediately afterwards be put into casks, and in the presence of the officer either carried directly on shipboard for exportation, (if intended to be immediately exported,) or else into such warehouse to be locked up in manner aforesaid. *f.* 13.

If it shall happen that the spirits distilled for exportation in one day belonging to any distiller, cannot for want of time be conveyed from the spirit cask, (into which they are directed to be run immediately from the still,) and locked up in the warehouse, the officer shall gauge the same, and secure the lid of the said spirit cask, and take samples thereof; which spirits shall be locked up in the warehouse the next morning (if not intended for immediate exportation). And if it shall appear that any decrease has been made in the quantity or quality of the said spirits so gauged; or if any such spirits shall have been removed in the absence of the officer; the distiller shall be charged for the said spirits so decreased or removed, double the duties which they would have been charged with if made for home consumption. *f.* 14.

[By 42 G. 3. c. 93. *f.* 9. If it shall happen that the spirits distilled for exportation in one day, cannot for want of time be conveyed from the spirit cask, and locked up, (as by the 2 G. 3. c. 5. *f.* 22. is directed,) and any decrease (as therein mentioned) has been made in quantity or quality, or if they have been removed in the absence of the officer of excise, the distiller shall in lieu of the charge therein directed to be

made be charged with double the duties which the wort, wash, liquor, or other preparation would have been chargeable with had they been home-made for home consumption, reckoning at the rate of 100 gallons of wort, &c. for every 24 gallons of spirits.]

Spirits made for exportation not to be taken out for home consumption.

By several former acts, spirits made for exportation were permitted (under certain regulations) to be taken out of the warehouse for home consumption : but now, by the 21 G. 3. c. 55. no spirits *made for exportation* shall, in any case whatever, be delivered out of the warehouse for home consumption. *f. 33.*

To be returned to the warehouse after rectifying.

When any quantity of raw spirits shall, in pursuance of any notice, be delivered out of the warehouse, in order to rectify the same, as many gallons of rectified spirits, and of the same strength when made up, shall be produced as such quantity amounted to when taken out of the warehouse ; allowing only for the feints. And the commissioners shall make just allowances for necessary waste, and the difference that will arise between gauging and weighing spirits. Which feints shall also be run off from the still directly into one large feint cask, and shall be immediately gauged as soon as the still is off, and an account thereof taken by the officer, and kept in stock by him ; who may take samples of such feints. Which feints shall be in like manner locked up in the warehouse, and shall be there put into one or more large casks to be provided by the distiller, and marked with the word *Feints*. And every such distiller shall, once a month at least, distil all his feints, and make up the spirits to be produced therefrom of the strength of one to six under hydrometer proof. And all such spirits shall then be locked up, or exported as other spirits for exportation are hereby directed to be. 2 G. 3. c. 5. *f. 17.*

By the 21 G. 3. c. 55. The distiller shall be allowed after the rate of six gallons for every ton, in full compensation for all waste, loss, or damage (except in case of unavoidable accidents); and all decrease above that proportion shall be charged with double the duty which the spirits would have been charged with, if they had been made for home consumption. *f. 32.*

Penalty for wash or spirits missing.

By the 2 G. 3. c. 5. If any decrease shall be found in the *wash* brewed or made for the distilling of spirits for exportation (except such decrease as shall be made appear to the commissioners to have really and truly arisen from accidents,) the officer shall charge double duty for the same, calculating such wash so found to be decreased, to produce the same quantity of low wines and spirits as wash is presumed to do when spirits are made for home consumption : And if any decrease shall appear in the stock of *spirits* made for exportation, except

cept such as may be accounted for by certificate of the officer either as being exported for merchandize or for stores, or as being taken out for home consumption on payment of duties by consent of the commissioners, or by any allowance the commissioners shall have made for waste or for any difference which may have arisen between gauge and weight, or by being sent coastwise for exportation, or by being sent with the consent of the commissioners to any other distiller in order to be rectified for exportation; the officer shall charge for all the spirits so decreased double the duty such spirits would have been charged with if made for home consumption. *f. 18.*

By the 21 G. 3. c. 55. For better enabling the officers to make true charges on the apparent decreases of wash discovered at the still-house of every distiller making spirits for exportation, every such distiller, who between *Oct. 1* and *June 1*, yearly, shall distil spirits for exportation, shall for every six gallons of wash produce to the officer one gallon of spirits; and between *June 1* and *Oct. 1*, for every seven gallons of wash one gallon of spirits; otherwise they shall be charged for all the wash missing, over and above the said six gallons and seven gallons, as for spirits made for home consumption. *f. 31.*

Every distiller who, between the 15th *Nov.* and 15th *May*, shall distil spirits for exportation to foreign parts, shall, for every nine gallons of wash found in his custody, produce to the officer at least two gallons of spirits; and between 15th *May* and 15th *Nov.* shall, for every six gallons of wash so found, produce one gallon of spirits, of the strength of one sixth under hydrometer proof; and if the same shall fall short of such proportions, such person shall pay 1s. 6d. for every gallon of wash missing. 28 G. 3. c. 46. *f. 77.*

When any spirits made for exportation shall be entered for *Ireland*, or his majesty's plantations in *America*, or any other parts beyond the seas in *Europe*, or any parts in *Africa* or *Asia*; the exporter thereof, when the whole quantity of spirits intended at that time to be exported shall be shipped, shall immediately give bond in double value of the spirits entered for exportation, and double the duties such spirits ought to have paid if they had been made for home consumption, that the same shall (the danger of the seas and enemies excepted) be landed at the place of destination; and until such bond shall be entered into by the exporter, the distiller from whose warehouse such spirits were sent shall be charged for such quantity of spirits so shipped for exportation with double the duty such spirits would have been charged with if made for home consumption, and such charge shall not be discharged till such bond shall be given; and such bond shall

Bond to be
given on expor-
tation.

not be discharged till a certificate be produced from the proper officer abroad of the due landing thereof, and of oath being made before him by the master or other person having charge of the vessel that the same had not been fraudulently diminished, relanded, or unshipped; and until oath shall also be made by the exporter at home, that to the best of his knowledge or belief the same were disposed of at the place referred to in the certificate; and the condition of the bond shall be, to produce such certificate from *Ireland* in six months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Asia* in three years, dangers of the seas and enemies excepted. 2 G. 3. c. 5. s. 21, 22.

Bond for carrying coastwise for exportation.

When spirits made for exportation shall be delivered out of the warehouse, to be sent *coastwise* (with a certificate from the proper officer) in order for exportation, the distiller shall, on taking out the same, give bond in double the value of the spirits; [and by 42 G. 3. c. 93. s. 12. double the duties which the wort, &c. would have been chargeable with had the said spirits been made from fermented wort or wash in *England*, for extract from malt, &c. for home consumption, reckoning 100 gallons of wort, &c. for 24 gallons of spirits,] that the same shall (the danger of the seas and enemies excepted) be truly landed in such port of this kingdom for which the same shall be entered. And such bond shall not be discharged or delivered up till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entered, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying that the master, mate, purser, or other person having charge of the vessel, had made oath before him that the said spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of such spirits had been wilfully or fraudulently diminished, relanded, or unshipped since they were put on board; and also testifying that the same were really since their arrival there exported from thence to foreign parts: And the condition of all such coast bonds shall be, to produce such certificate in six months from the date thereof. And such spirits so to be sent coastwise, when landed at the port for which they were entered, shall be immediately put into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are sent, and by the said chief officer, by two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other

other by the officer. And all the masters, commanders and other persons belonging to any vessel carrying goods coastwise, who shall assist or connive at the fraudulent landing, embezzling, or diminishing any spirits sent coastwise, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for enforcing the fair exportation of spirits to foreign parts. 2 G. 3. c. 5. f. 19.

But now by the 2 G. 3. c. 93. f. 7. Every maker of spirits for exportation sending any such spirits out of his locked up warehouse to any other distiller, and the distiller who shall receive the same, shall in lieu of the said bond give bond with sufficient security in double the value of such spirits, and double the duties which the wort, wash, liquor, or other preparation from whence such spirits were made, would have been chargeable with had they been made from fermented wort or wash brewed in *England*, for extracting such spirits for home consumption from malt, corn, grain, or tilts, reckoning at the rate of 100 gallons of such worts, &c. for every 24 gallons of such spirits, for the due exportation of such spirits, within three months next after the date of each respective bond, provided that such leave be first obtained, and such notice thereof given as by the said 2 G. 3. c. 5. f. 19. is required.

By f. 8. of the same act, the 2 G. 3. c. 5. f. 26. is altered, and in case of decrease found in the wash, the distiller is to be charged in double duties on the wash instead of the spirits.

By f. 10. The bond to be given by the distiller shall (instead of the amount in 2 G. 3. c. 5. f. 27.) be in double the value of the spirits, and double the duties which the worts, &c. would have been chargeable with if the spirits had been made in *England* for home consumption, reckoning 100 gallons of wort, &c. for 24 gallons of spirits.

All low wines or spirits carried *coastwise* without a certificate from the officers of excise where they were made that the duty hath been paid, shall be forfeited, and seized by the officers, where they shall be brought in. 3 G. c. 4. f. 17.

No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any such low wines or spirits, shall be chargeable with any duties of excise, and all drawbacks thereupon, whether payable by the commissioners of excise or customs, shall cease. 2 G. 3. c. 5. f. 5, 6.

The 43 G. 3. c. 69. which consolidates the duties, &c. of excise, in addition to such allowances as are made by *Sched. (C.)*, continues all other such special allowances, bounties, and drawbacks as are particularly directed to be made by

Certificate for carrying coastwise.

Exportation duty free.

any act or acts of parliament in force on or immediately before 5th July 1803, except so far as such allowances may be varied or repealed by the said act.

Bounty on ex-
portation.

For the encouragement of the exportation of spirits made from *corn*, there shall be a bounty of 3l. 12s. for every ton of spirits made from corn, which shall be exported as merchandize. And on oath made before two commissioners of excise, or justices of the peace for the place from which such spirits are intended to be exported, that the same were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were necessary for rectifying the same, and that since the making thereof the same have been properly secured in a warehouse according to the directions of this act, and that the same are to be exported for merchandize to be spent beyond the seas; and on producing a certificate under the hand of the officer of excise for the port or place where such spirits were shipped, of the quantities so shipped, and that the same were shipped in the presence of such officer; the distiller shall be paid by the commissioners of excise, or their collector for the port or place where such spirits shall be shipped, the said bounty of 3l. 12s. a ton, and so in proportion for a greater or less quantity. 2 G.3. c.5. f. 20. 27 G.3. c.13. Sched. (F.)

Drawback on
exportation.

By the former acts it was generally provided that home spirits might be exported, and a drawback of the duties was to be allowed thereupon.

And by the 6 G.2. c.17. For spirits drawn from *British* corn, there was to be allowed a drawback by the excise officers at the port of shipping, of 4l. 18s. a ton, in full of all drawbacks; except that from every ton of spirits drawn from barley, malt, or other corn, there shall be paid by the officers of the customs, when barley is 24s. a quarter, or under 1l. 10s. in like manner as for corn exported. f.7,8.

And by the 33 G.2. c.9. There was to be an additional drawback of 24l. 10s. a ton, on all *British* made spirits exported; oath being made before two commissioners of excise, or justices of the peace, that the duties were paid, and that the same were to be exported for merchandize to be spent beyond the seas. f.15.

Provided, that no drawbacks shall be allowed for any *British* made spirits, exported as merchandize in any cask containing less than 100 gallons, or in any vessel of less burden than 100 tons. *Id.* f.16. Except to *Africa* and *Newfoundland*, unto which places they may be exported as merchandize in vessels not less than 70 tons. 6 G.3. c. 46. f.9.

By the said act of the 33 G. 2. c. 9. It is further enacted, that the same drawbacks and allowances shall be made on *British* made spirits *shipped as stores*, or spent on shipboard, on giving five days notice thereof to the commissioners of excise or to whom they shall appoint, mentioning therein the destination of the voyage, the tonnage of the ship, and the number of mariners intended to be employed; which said commissioners, or person appointed by them, shall ascertain the quantity of such spirits which shall be shipped on board such vessel as stores, and the size and marks of the casks in which such spirits shall be shipped. And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as stores to be spent in the voyage, and on certificate from the officer of excise where such spirits were shipped of the quantity so shipped, and that the same were proof spirits, and shipped in the presence of such officer, the duty shall be allowed or paid back. *f. 7.*

Provided, that no drawback shall be allowed for spirits shipped as *stores* in any vessel of less than 100 tons burden. *f. 8.*

If any such spirits shipped for *stores* shall be re-landed in *Great Britain, Guernsey, Jersey, Alderney, Sark, or Man*, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer,) then, not only all such spirits and the casks or other package shall be forfeited, but also the person who shall bring or procure such spirits to be re-landed, or shall be assisting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be re-landed, shall forfeit double the amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the horses or other cattle and carriages whatsoever made use of in landing, removing, or carrying the same; which may be seized by any officer of the custom or excise. Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for six months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the vessel, shall forfeit 100*l.* *f. 18.*

Such spirits shipped as stores, being re-landed,

And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods, all spirits shipped for stores shall during the time the vessel shall be in port be openly stowed and kept, so that the officers may at any time examine the same;

or concealed.

on pain of forfeiting double the duty of all such stores which shall not be so stowed and kept, or produced and shewn to the officers of excise, according to the rate such spirits would have been charged with if made for home consumption. 2 G. 3. c. 5. f. 21.

By the 42 G. 3. c. 93. f. 12. The penalties imposed in respect of spirits shipped as stores are repealed, and it is enacted, that spirits made or drawn in *Great Britain*, for exportation, and shipped as stores, shall be openly stowed while within the limits of this kingdom, so that they may be examined, on pain of forfeiting the double duties which the wort, wash, liquor, or other preparation from whence such spirits were made would have been chargeable with, if made in *England*, for home consumption from malt, corn, grain, or tilts, after the rate of 100 gallons of such wort, &c. for every 24 gallons of spirits not so stowed or shewn; the said charge to be paid by the master of the ship.

Exportation of
rum.

On the exportation of rum or spirits of the produce of the *British* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of custom shall be drawn back; and rum exported from the rum warehouse, before payment of the excise duties, shall be discharged of the said duties of excise. 33 G. 2. c. 28. f. 1, 2.

And on oath made before two commissioners or justices, that the rum is to be exported for merchandize to be spent beyond the seas; and on producing a certificate from the excise officer of the quantity shipped, and that a certificate was produced from the proper officer of delivery from the warehouse, on bond being given for the due exportation thereof, and also upon delivery of such last-mentioned certificate, the person having custody of the bond for payment of the duties shall deliver it up; or if only a part of the rum contained in the bond shall be certified to be shipped off, then such quantity shall be indorsed upon the bond. 33 G. 2. c. 28. f. 1, 2. 8 G. 3. c. 25. f. 7.

Provided, that the said drawback shall not be allowed for any rum exported in any cask containing less than 100 gallons, or shipped on board any vessel of less burthen than 100 tons (except to *Africa*, *Ireland*, and *Newfoundland*, unto which places they may be exported as merchandize, in any vessel not being of less burthen than 70 tons; 6 G. 3. c. 46. f. 9.); or exported from any port not being the port of its importation. 33 G. 2. c. 28. f. 6.

If after delivery from the said warehouse, any rum or spirits shall be concealed; or not shipped within 12 hours; or the casks or package be opened, or any part be taken out, or the quality be altered; all such rum and spirits shall be forfeited with the casks and package, and may be seized by

any officer of excise; and the bond for exportation shall be put in suit, unless the commissioners see cause to forbear the same. *f. 8.*

Whereas doubts have arisen whether officers of excise may take by way of sample of rum and spirits, the produce of the *British* sugar plantations, or *British* spirits made from melasses which shall be *exported* from this kingdom, more than one pint in the whole out of one cask or package; it is enacted by 28 G. 3. c. 37., that such officer may take as many samples as he shall think fit (neither of such samples to exceed half a pint) out of each of such casks or packages, paying (if demanded) after the rate of 3s. *per* gallon. And if any person shall obstruct or hinder any such officer in taking such samples as aforesaid, he shall for every such offence forfeit 100l. *f. 16.*

Officers may take samples.

Such officers may in like manner take samples of all such rum or spirits, the produce of the *British* sugar plantations *shipped as stores*. *Id. f. 11.*

And if any such rum or spirits *shipped as stores* shall be re-landed, the same together with the casks or other package, and also the boats, vessels, horses, cattle, and carriages made use of in re-landing or removing thereof, shall be forfeited, and may be seized by any officer of customs or excise: and every person who shall so unship, or cause to be unshipped, any such rum or spirits, or shall be assisting or concerned therein, or to whose hands the same shall knowingly come, shall forfeit treble the value thereof; and if any master or other person on board such vessel shall assist in, or connive at such re-landing, he shall (over and above all other penalties) forfeit 100l. *Id. f. 18.*

Rum, &c. shipped as stores being re-landed.

Sect. V. 15. (d.) *Spirits made in England to be exported to Scotland, or in Scotland to be brought to England.*

By 33 G. 3. c. 61. *f. 29.* Spirits distilled in *England* for exportation to *Scotland*, or in *Scotland* to be brought into *England*, are to be subject to the rules and regulations contained in 28 G. 3. c. 46. (made perpetual by 33 G. 3. c. 28. *f. 24.*)

By various acts of parliament a duty was directed to be paid by every distiller and rectifier in *England* for exportation to *Scotland*, according to the cubical contents of every still belonging to the party applying (exclusive of a duty to an equal amount on *Scotch* stills.)

But by 43 G. 3. c. 69. The duties of excise are consolidated, and all the duties, allowances, bounties, and drawbacks of excise, and other duties under the management of the commissioners, cease and determine, and certain other duties

duties are imposed in lieu thereof. And by the said act 43 G. 3. c. 69. and also c. 81., certain duties are imposed on the cubical contents of stills used for distilling low wines and spirits in *Scotland*, &c., and also a duty on certain licences to be taken out there by dealers in spirits; which duties being extraneous to matters that concern jurisdictions in *England* are omitted to be particularized here.

And by 39 and 40 G. 3. c. 73. f. 3. Spirits distilled in *England* for exportation to *Scotland*, are exempted from the excise duties in *England*.

Duties, &c. proportionate to the quantity.

And all duties and drawbacks under these acts or either of them shall be proportionate to the actual quantity. 43 G. 3. c. 69. f. 5. & c. 81. f. 5.

Regulations for distilling spirits in *England* for exportation to *Scotland*, and in *Scotland* for exportation to *England*, &c.

By 45 G. 3. c. 100. f. 1. No person shall make or distil in *England* any spirits for exportation to *Scotland*, or in *Scotland* for exportation to *England*, in any house or place entered or not entered, within the distance of one mile from any house or place entered for keeping *British* spirits for sale in quantities of two gallons or upwards, or which shall then be, or within one year immediately preceding shall have been entered for making or distilling spirits for exportation to foreign parts, or for making or distilling spirits in *England* for the consumption of *England*; nor shall any person make or distil in *England* any spirits for the consumption of *England*; or make use of any house or place for the keeping of *British* spirits for sale in quantities of two gallons or upwards, within the like distance of one mile from any house or place entered, or which shall within one year immediately preceding have been entered, for making or distilling spirits for exportation from any one of the said parts of the united kingdom to the other of them; on pain of forfeiting in every such case 500l. together with every still, mash, tun, cooler, washbatch, and other utensil; and also all the spirits, wort, wash, or other materials fit for distillation, which shall be found in any such house, &c., and they shall be seized by any officer of excise: Provided always, that nothing in this act contained shall extend to prevent any person not being such distiller of spirits for such exportation, nor concerned therein, from entering and making use of any house, &c. for keeping *British* spirits for sale in quantities of two gallons or upwards, within any distance not less than one hundred yards of any house, &c. which shall be, or which, within one year immediately preceding, shall have been entered for distilling or making spirits for such exportation; nor to prevent any distiller for such exportation, from making entry of any house, &c. for distilling for such exportation, within any distance not less than one hundred yards of any house, &c. which shall be, or which, within

Penalty.

one year immediately preceding, shall have been entered for keeping *British* spirits for sale in quantities of two gallons or upwards, provided such distiller shall not have any interest in the trade carried on in any such house, &c. entered for keeping *British* spirits for sale as aforesaid.

By *f. 6.* No place entered for making for exportation to *Scotland*, shall be entered or used for making spirits for the consumption of *England*, within the year (reckoning from the first day of *October*,) in which it shall have been so first entered, nor until all the worts and wash remaining shall have been actually distilled into spirits, and the whole of the spirits so made, actually and *bonâ fide* exported to *Scotland*.

By *f. 14.* The entry of the place for distillation is to be made at no other time than the first of *October*, &c. and the licence to commence on that day.

By the act of 28 *G. 3. c. 46.* After reciting that it is expedient that spirits made in *England* to be exported to *Scotland*, or made in *Scotland* to be exported to *England*, should be under certain rules and regulations, it is enacted that all distillers who shall distil spirits in *England* to be exported to *Scotland*, and contrariwise, shall make four days previous entry of the stills and places used by them for that purpose; and shall give notice of the day they intend to begin to brew, and from what sort of materials; on pain of forfeiting *poul. f. 35.*

And if such distillers shall not begin their operation in an hour after the time specified in such notice, they shall give a fresh one, on the like penalty. *Id.*

And by 45 *G. 3. c. 100. f. 5.* No such distiller shall be permitted to make entry of any house or place for the making or distilling of spirits for such exportation, to commence working at any other period than the first day of *October* in each year, and every wash-still after the working thereof shall have commenced, shall be presumed to be kept regularly at work for the space of three calendar months successively at the least, to be computed from the day of beginning to work the same; and no person who shall have begun to work any such wash-still as aforesaid, shall be at liberty to discontinue or to withdraw the entry of any such wash-still, after the working thereof shall have commenced and been begun, until the expiration of that term so computed; and he shall be desirous to discontinue the working at the end of the said term or at any subsequent period, previous to the first of *October* then next, he shall give to the proper officer of excise fifteen days previous notice in writing of such his intention.

No such distiller shall be permitted to make entry, or give notice of his intention to make spirits in *England* to export

No house entered for distilling for exportation to *England* or *Scotland* shall be used for distilling for internal consumption.

Entry to be made.

The time of beginning to work the still.

Size of the still.

port to *Scotland*, whose wash-still will not contain 3,000 gallons including the head, and his spirit or low wine still $\frac{1}{4}$ th of his wash still: nor shall he be permitted to distil spirits for such exportation, although he may have made entry as aforesaid, unless he shall have distilled into spirits all the wash and low wines in his custody, for the making spirits for home consumption, 48 hours before the day mentioned in such entry. *f. 36. — 33 G. 3. c. 61. f. 29. 45 G. 3. c. 100. f. 2.*

Proportion of
the still.

By the 45 G. 3. c. 100. *f. 3.* The widest diameter of the still shall not exceed the altitude measured by a perpendicular line, drawn from the center of the bottom of the still to the center of the collar or lip, exclusive of the head, in a greater proportion than one-half of such altitude, nor shall the diameter at the bottom exceed the altitude, nor shall the bottom be curved excepting inwards or towards the bottom.

Distillers may
withdraw their
entry for exportation and make an entry for home consumption.

If any such distiller, having taken out such licence, shall withdraw his entry for making spirits for exportation, and shall make an entry for home consumption, he shall be allowed an abatement of the licence duty for every day the still is so used in making spirits for home consumption; if from *British* materials, 7 $\frac{1}{2}$ d. for every gallon of the contents of such still; if from melasses or sugar, 1s.; if from foreign refused wine, &c. 1s. 2 $\frac{1}{2}$ d.; and for stills employed in rectifying, 7 $\frac{1}{2}$ d. 28 G. 3. c. 46. *f. 41. 33 G. 3. c. 61. f. 31.*

Such distillers who have distilled all their wash into spirits for exportation may make a fresh entry for home consumption; and if they begin without making such entry, every such distiller shall forfeit 200l. 28 G. 3. c. 46. *f. 53. [See however the 45 G. 3. c. 100. f. 5. ante.]*

Every such distiller shall clear off all the said duties in one week after accrued, on pain of forfeiting double duty. *f. 43.*

And every such distiller, before he shall begin to draw off any low wines from his wash-still, shall charge the same with wort or wash in the proportion of not less than four parts in five of the whole quantity such still will contain; and shall work off the same in 24 hours, on the penalty of 200l. *f. 44.*

Manner of
charging the still.

And by 45 G. 3. c. 100. *f. 4* Every such entered wash-still shall every time the same shall be worked be presumed to be charged with wort or wash in the proportion of four parts in five of the capacity of such still including the head thereof, according to the average rates herein-after specified, (that is to say,) for such times as such wash-still shall be worked, the same shall be presumed to be charged as aforesaid, at the average rate of not less than six times in each week; and such wash-still shall not be charged or worked oftener than six times in each week on an average of the time

time for which such still shall be worked in any one year, reckoning from the 1st day of *October*; and if any distiller shall charge his wash-still oftener than such average, during the continuance of such entry in any one year, he shall for every working beyond such average pay duty at the rate of 20s. *per* gallon, computed at the produce of 18 gallons of spirits at the strength of one to ten over hydrometer proof; for every 100 gallons of wort or wash which such wash-still would require to charge it four parts in five of its contents.

Spirits distilled in *England* for exportation to *Scotland*, according to the 28 G. 3 shall not be chargeable with excise duty in *England*, 39 & 40 G. 3 c. 73. *f* 3. Wash for extracting spirits for exportation from *England* to *Scotland*, shall not be chargeable with any excise duty. 28 G. 3. c. 46. *f* 46.

Spirits distilled, and wash for extracting spirits for exportation to *Scotland*.

Every distiller in *England* for exportation to *Scotland*, shall for every 100 gallons of wash made from corn, grain, malt, tilts, cyder, or perry, or any *British* materials found in his custody between the 5th *July* 1788 and 6th *July* 1789, produce to the sight of the officer at least 16½ gallons of spirits of the strength of one to ten over hydrometer proof; and for every 100 gallons of wash made from melasses or sugar 18½ gallons of spirits; and for every 100 gallons of wash made from refused wines, &c. 16½ gallons of spirits: and for every deficient gallon he shall pay, if the materials be *British*, 2s. 9d.; if melasses or sugar, 2s. 10d½.; if foreign refused wine, &c. 5s.; and in default of payment thereof shall forfeit double the duty. *f* 47.

No wash that shall be brewed or mixed by any such distiller for extracting spirits for such exportation, shall be pumped up into the still, or removed from the vessel where it was fermented, but in the presence of the surveying officer; and shall be gauged and secured in a warehouse under three locks and keys, one thereof to be kept by the distiller, another by the supervisor, and the third by the gauger. And such distillers, removing wash from backs, or removing or running off spirits from stills contrary to this act, or obstructing the officer in taking samples, &c. or neglecting to provide warehouses, &c. or opening any doors in the absence of the officer; or removing spirits, or concealing wash, &c. shall forfeit 20s. *f* 48.

If such spirits distilled in one day cannot, for want of time, be conveyed to and locked up in the warehouse, they shall be gauged and secured in the spirit cask; and for every gallon decrease therein, such distiller shall forfeit 10s. *f* 49.

If such distiller shall be desirous of taking any such spirits from the warehouse, he shall give four hours previous notice to the officer, who shall attend and see the same taken out; and

and if not taken out within one hour of the time specified in the notice, a fresh one shall be given; and in default of giving such notice or specifying therein the particulars required by this act, or beginning to work without a fresh notice; he shall forfeit 100*l.* *f.* 50.

Raw spirits
taken out of the
warehouse to be
rectified.

When any raw spirits shall be taken out of any warehouse to be rectified, the same shall be in the presence of the officer, and shall be rectified forthwith, and put into casks, and shall be made to the proper strength, and gauged, and either put on shipboard, or into such warehouse as aforesaid. *f.* 51.

On taking out spirits from warehouses to be rectified, an allowance shall be made of two gallons for every 100 gallons of decrease; and for any extra deficiency not properly accounted for, a duty shall be paid of 5*s.* *per* gallon. *f.* 52.

Spirits may be sent from the warehouse of any maker of spirits to any other distiller, under certain regulations specified in the act. *Id.*

Bond.

And bond shall be given for the due exportation of such spirits; and if the same shall be afterwards unshipped, or laid on land (unavoidable accidents excepted), the same shall be forfeited, and may be seized by any officer of excise. *f.* 54.

Distillers to give
bond with sure-
ties for the per-
formance of the
regulations of
this act.

By 45 G. 3. c. 100. *f.* 13. Before any person shall begin to prepare or brew any wort or wash to be distilled as aforesaid, he shall give bond with two sufficient sureties, (the bond to be taken in his majesty's name), himself in the penalty of 20*s.*, and the sureties jointly and severally in the penalty of 5*s.* for every gallon of the capacity of the wash-stills including the heads thereof, or employed by such distiller, conditioned for his duly observing all the rules contained in this act; and in default of such bond, every entry made by him shall be void to all intents and purposes.

Entry to be
made of spirits
brought from
Scotland.

Entry shall be made with the excise collector of all spirits imported from *Scotland*, and the import duty paid, and spirits landed in 20 days after arrival, otherwise the same shall be forfeited, together with the casks and package, which may be seized; and such spirits shall be publicly sold to satisfy the duty, and the overplus to go to the officer who seized the same, and if they do not satisfy the duty, or only barely, the officers shall be rewarded not exceeding 1*s.* *per* gallon. *f.* 57.

In the entries of spirits imported from *Scotland*, the number of casks or other packages containing such spirits, and the numbers and marks of each, shall be inserted; on pain of forfeiting such spirits, casks, and package, which may be seized. *f.* 58.

Size of the ves-
sels and casks.

No spirits shall be sent from *Scotland* to *England*, or from *England* to *Scotland* by land, or in vessels of less than 70 tons burden, or in casks containing less than 100 gallons, on forfeiture thereof, together with the casks or package; and also

also the vessels, boats, horses, cattle, and carriages employed therein, which may be seized. *f. 59.*

If spirits shall be imported into *Scotland* from *England*, or into *England* from *Scotland*, of a strength greater than one to ten over hydrometer proof, they shall be forfeited, together with the casks and package, which may be seized. Provided that if the spirits manufactured in *Scotland*, and imported into *England*, be of a greater strength than as aforesaid, and such excess shall not exceed three *per centum* over and above the said strength, such spirits shall not be forfeited, but shall be charged with a further duty proportioned to their said surplus strength. *f. 60.*

Strength of spirits.

By 45 G. 3. c. 100. *f. 7.* Every such distiller shall produce, and duly export to *Scotland*, at least 18 gallons of spirits at the strength of one to ten over hydrometer proof for every 100 gallons of wort or wash which shall be made by such distiller, and if any such distiller shall not so do, or shall not produce and so export a quantity of spirits at the said strength, equal to the quantity which ought to be produced by regularly working his wash-still, charged in the proportion and worked the average number of times herein-before required, such distiller shall for every neglect, for the whole quantity of spirits which shall appear to be deficient, pay duty for the same at and after the rate of 20s. for every gallon of such spirits so deficient.

Distillers for exportation to export a quantity of spirits in proportion to the quantity of wash, or in default to pay a higher duty by way of penalty.

By *f. 9.* If any person shall take, remove, or carry away, or aid therein, from any such house, &c. or from any other place in which any spirits so made shall be lodged (except for the sole purpose of exportation directly to *Scotland*), he shall for every such offence forfeit 100l. over and above all penalties or forfeitures to which the proprietor or maker may be liable; and any officer of excise and all other persons acting in his aid, may arrest and detain every person so taking, &c. and convey him before one justice for the county, &c. wherein he shall be so arrested or detained; and such justice, on confession of the party or on proof by oath of one witness, shall convict, and the person so convicted, shall immediately on such conviction pay the said sum of 100l. into the hands of such officer of excise. to be applied in manner hereinafter directed; and on refusal to pay, the justice so convicting shall, by warrant under his hand and seal, commit each offender to the house of correction for the said county, &c. there to be kept to hard labour for 12 calendar months from the day of such conviction; and such person shall not be discharged until payment of the said sum of 100l. or until the expiration of the said 12 calendar months.

Penalty on removing spirits otherwise than for exportation.

Spirits sent by water from *England* to *Scotland*, or the contrary, shall be accompanied with a permit, on pain of forfeiture

Permit.

forfeiture thereof, and also the casks and packages, which may be seized. But the same shall not be liable to seizure on account of any small difference or deficiency in the gauge at their arrival, when the same is proved to have been occasioned by accident, and without fraud. *f.* 61.

Obstructing the officers.

If any distiller, rectifier, compounder, or dealer in spirits, or servant belonging to any such person, shall obstruct any officer in the execution of this act, he shall forfeit 200*l.* *f.* 78.

A sample to be taken of all British spirits.

[And by 45 G. 3. c. 100. *f.* 11. It shall be lawful for the proper officer of excise who shall attend the warehousing or making up of *British* spirits distilled for exportation to *Scotland*, to take a sample not exceeding half a pint out of every vat, &c. that shall be stored, which sample, after the strength shall have been ascertained, shall be labelled with the number of such vat, &c. and the day and year when taken, and shall be sealed and securely kept under the joint locks of the proper surveyor or supervisor and officer until the expiration of three calendar months after the spirits to which such samples refer shall have been duly certified to have been so exported, and at the expiration of such time every such sample shall be sold under the direction of the commissioners of excise, and of the produce thereof, after deducting the charges of keeping and selling the same, a sum after the rate of 3*s.* per gallon shall be paid to the distiller from whose stock the same was taken.

Distillers once in six or seven weeks to make out an account of quantities distilled, and return the same verified on oath to the collector of excise.

By *f.* 12. Every such distiller shall once in every six or seven weeks deliver to the proper collector an account of the worts or wash made within such time, and of the quantity actually distilled within the same period, and also of the quantity of spirits computed at the strength of one to ten over hydrometer proof which have been actually made by such distiller, together with an account of such spirits so computed, sent, or exported within the same period to *Scotland*, and every such distiller shall make oath to the truth of such account before such collector, (which oath such collector is hereby empowered to administer); and for every neglect or refusal so to do such distiller shall forfeit 200*l.*

By *f.* 15. Pains and penalties for wilful and corrupt perjury are imposed upon those who take false oaths under this act.

Sect. V. 15. (e.) *Matters relating to Importers and Dealers in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.*

By 43 G. 3. c. 69. Every dealer in brandy or £. s. d. License to
other spirituous liquors or strong waters, not brandy dealers.
being a retailer in any part of *Great Britain*,
or not being a wholesale dealer in plain aqua
vitæ only distilled from malt, corn, grain, barley,
beer, big, or other *British* materials in *Scotland*,
shall annually take out a license, for which he
shall pay - - - - - 5 0 0

And the same shall be renewed ten days at least before
the end of the year on pain of 100l. 24 G. 3. c. 41. *sess.* 2.
f. 7. 29 G. 3. c. 63. f. 7. (a).

Every person who shall have in his custody above 63 Who shall be
gallons shall be deemed a feller and dealer in such liquors. deemed a feller
6 G. c. 21. f. 18. and dealer.

And by 43 G. 3. c. 69. *Sched. (A.)* all former duties re- License for re-
specting licenses for selling spirituous liquors by retail are re- tailing spirits.
pealed, and the following duties imposed in lieu thereof.

Every retailer of distilled spirituous liquors or £. s. d.

strong waters, in *Great Britain*, (not be-
ing a retailer of plain aqua vitæ only
made or distilled from *British* materials,
in that part of *Great Britain* called *Scot-*
land) shall pay for every license to be taken
out as aforesaid, if the dwelling-house in
which such retailer shall reside or re-
tail such distilled spirituous liquors or
strong waters at the time of taking out
such license, shall not, together with
the offices, courts, yards, and gardens
therewith occupied, be rated under the
authority of any act or acts of parlia-
ment for granting duties on inhabited
houses, at a rent of fifteen pounds per
annum or upwards - - - - -

4 14 0

Every retailer, if rated as aforesaid at fifteen
pounds per annum or upwards, and
under twenty pounds - - - - -

5 2 0

— If at twenty pounds per annum or up-
wards, and under twenty-five pounds - - - - -

5 10 0

(a) The 100l. penalty is inflicted on the supposition that no
such provision existed; whereas by the preceding stat. of 24 G. 2.
a penalty of 30l. was directed to be paid on such failure. The
100l. therefore must be taken in lieu thereof.

Every retailer, if at twenty-five pounds per annum or upwards, and under thirty pounds	£.	s.	d.
— If at thirty pounds per annum or upwards, and under forty pounds	5	18	0
— If at forty pounds per annum or upwards, and under fifty pounds	-	-	6 6 0
— Or if at fifty pounds per annum or upwards	-	-	6 14 0
	-	-	7 2 0

Which license shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof, and no longer: Provided nevertheless, that where such license shall be first granted between the 5th day of *April* and the 10th day of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such license shall be granted. *f. 6, 7, 8.*

Who shall be deemed a retailer.

And every person who shall sell or expose to sale any distilled spirituous liquors or strong waters mixed or unmixed; in less quantity than two gallons shall be deemed a *retailer*. *17 G. 2. c. 17. f. 20. 30 G. 3. c. 38. f. 15.*

License to be renewed annually.

And such license shall be renewed annually ten days at least before the expiration of the former license, on penalty of 5*l.* *30 G. 3. c. 38. f. 9.*

Persons in partnership.

But persons in partnership need only take out one license for one house, shop, or place. *f. 10.*

To be first licensed to sell ale.

No person shall have a license to retail spirituous liquors, until he shall have been licensed to sell ale or spirituous liquors by two justices. *9 G. 2. c. 23. f. 14. 10 G. 2. c. 8. f. 11. 5 G. 3. c. 46. f. 22.*

In the case of *R. v. Downes* and another, *H. 30 G. 3.* it was determined that a person, who sells spirituous liquors by retail without a license from two justices, is liable to the penalties of *5 G. 3. c. 46. (a)*, though he have a license from the commissioners of excise to retail spirituous liquors. *3 T. R. 560.*

Conviction for selling spirits, &c. without a license from two justices, or keeping a disorderly house.

By *9 G. 2. c. 23. f. 15.* for the more easy convicting of persons who shall sell spirituous liquors by retail without a license from two justices, or who shall keep a disorderly house where sold, the conviction may be in the following form, or to the like effect;

Westmorland. } A. O. is convicted on his own confession,
(or on the oath of A. W.) of having sold
strong waters in the parish of _____ in this county, on the
_____ day of _____ without being duly licensed

(a) See the penalties of this act, title *Alshouses, Head, Selling Ale without License.*

thereto

thereto by two justices of peace [or as the case may be]. Given under my hand and seal, &c.

But by 28 G. 3. c. 37. no person licensed to retail spirituous liquors as aforesaid, and who shall afterwards be refused by the justices to renew his license to sell ale, shall be liable to pay for such spirit license for any time elapsed after the expiration of such ale license. *f. 30.*

Where an ale license shall be refused.

By 29 G. 3. c. 63. every such licensed person, who shall give to the collector or supervisor of excise one month's previous notice of his intention of leaving off retailing of spirits, and shall leave off accordingly, shall not be liable to the payment of any further duty after he shall have so left off, and such license shall be void. *f. 5.*

Or a month's notice given.

And on the death or removal of any such licensed person, the officers of excise may authorize the executors or administrators, wife or child of such deceased person, or the assigns of such person so removing, to carry on such trade the remainder of the year. *Id.*

Licensed person dying or removing.

Provided always, that no license shall be granted by virtue of this act to any other than such persons only as might have been licensed before the passing thereof. *f. 14.*

Who only shall be licensed.

No license shall be granted except to such persons only who keep taverns, victualling houses, inns, coffee-houses, or ale-houses; and all other licenses shall be void: and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the license shall be void. 17 G. 2. c. 17. *f. 19.*

No license shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10l. a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12l. a year, without any deduction or abatement, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no license shall be of any avail longer than he shall be so qualified. 24 G. 2. c. 40. *f. 8.* 26 G. 2. c. 13. *f. 10.*

No license shall empower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall retail the same at the time of granting the license. 17 G. 2. c. 17. *f. 21.* 27 G. 3. c. 30. *f. 4.* 30 G. 3. c. 38. *f. 10.*

To be licensed only where they dwell.

By 16 G. 2. c. 8. *f. 9.* retailers of spirituous liquors without a license from the officers of excise were subject to a penalty of 10l. By 24 G. 2. c. 40. *f. 9.* all liquors found in the custody of such persons then, or at any time, within six calendar months after conviction, were to be seized. And by 13 G. 3. c. 56. *f. 1.* and 30 G. 3. c. 38. *f. 9.* after reciting that

Penalty for selling spirits without a license.

that the said penalty of 10l. is sometimes insufficient to deter offenders, it is enacted that if any person shall by himself, or by any other to his benefit, retail any distilled spirituous liquors or strong waters, without a license from the officers of excise, he shall forfeit 50l. to be recovered, (F. G. H. I. K. L.) levied and mitigated as by the laws of excise (a), or in the courts of *Westminster*.

Mitigation.

Provided, that the said penalty shall not be mitigated below the sum of 5l. 13 G. 3. c. 56. f. 4.

Retailer's houses to be entered.

Every person who shall retail in any less quantity than two gallons, shall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him used or intended to be used, at the next excise office, and of all spirituous liquors therein; on pain of 20l. for every such place, and 40s. for every gallon concealed and not entered, and also the liquors and casks. 9 G. 2. c. 23. f. 6. 30 G. 3. c. 38. f. 10.

Certain words to be put up.

By the 19 G. 3. c. 69. Every importer for sale, or dealer in foreign brandy, arrack, rum, spirits, or other foreign strong waters, who shall sell the same either by wholesale or retail, shall cause to be painted in large legible characters, over the outer door, or in the front, or on some conspicuous part of every house, shop, warehouse, cellar, vault, or other place so used by him, the words *Importer of*, or *Dealer in*, *foreign spirituous liquors*; on pain of 50l. for every shop, &c. f. 18.

Buying of persons not having those words put up.

And if any importer or dealer in foreign spirituous liquors shall buy, or procure any one to buy to his use, any foreign spirituous liquors of any other person than of an importer, or dealer, over the door of whose shop or other place used for the keeping of foreign brandy, &c., the words aforesaid shall be written or painted; he shall forfeit 100l. over and above all other penalties.—Provided, that such dealer shall not be subject to the said penalty, by reason of the purchase of any foreign spirituous liquors whilst they remain on board the ships wherein they were lawfully imported, or on the quays on which they have been lawfully landed; nor to the purchase of any rum whilst it remains in the warehouse, according to the act of 15 & 16 G. 2.; nor of any arrack, whilst it remains in the warehouses of the *East India* company; nor to the purchase of any prize foreign spirituous liquors; nor of any foreign spirituous liquors sold for the benefit of the insurers or proprietors to defray the charges of salvage. f. 19, 20.

(a) For which see *ante*, Sect. III.

If any person, not being such importer or dealer, shall buy any of the said goods, or procure, &c. (except as before excepted) of any person not having the aforementioned words painted over his door as aforesaid; he shall forfeit 10l.: And if the seller shall, within 20 days, and before any information hath been lodged against him, inform against the buyer, he shall be discharged from all penalties to which he might be liable for such his own offence. *f. 22.*

If any person, other than such as hath made entry as aforesaid, shall paint over his door the words aforementioned, he shall forfeit 50l. over and above the penalties for selling or dealing without entry. *f. 21.*

Putting up those words without making entry.

No spirituous liquors, or strong waters, shall be brought into any such warehouse or other place, without first giving notice to the officer of excise, and leaving with him an authentic certificate that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemned; on pain of forfeiting 20l. and also the liquors and casks. 9 G. 2. c. 23. *f. 7.*

Retailers to give notice of bringing in.

All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the same in separate cellars, or other places, from their foreign brandy or spirits; on pain of 10s. for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found. 8 G. c. 18. *f. 11.* (continued: *vide ante.*)

British to be kept separate from foreign spirits.

It shall be lawful for the officers of excise to take samples, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors in any shop, warehouse, or other place belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quality shall be sold for at the time of such sample taken. 32 G. 2. c. 29. *f. 2.*

Officers may take samples in the shop or warehouse.

No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40s. a gallon, and the liquors so mixed shall be seized and forfeited. 9 G. 2. c. 23. *f. 8.*

Retailer increasing the liquor.

If the officer of excise shall find any increase of *foreign* brandy, spirits, or strong waters, over and above the quantity which he found at any dealer's on the last survey, such increase shall be deemed to be made by foreign brandy, &c. for which no duty was paid; and so much as shall be found increased, shall, together with the cask or other vessel, be forfeited, unless the owner make it appear that the increase was made by mixing therewith in the presence of the officer

of the division some of his stock of *British* spirits, whereof the officer had taken an account, or by foreign brandy, &c. brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 G. c. 18. f. 12. (continued: *vide ante*.)

By the 21 G. 3. c. 55. If the officer shall find any increase in the stock of any dealer in or seller of spirituous liquors, over and above the quantity which he found at his last survey, such increase, whether mixed or unmixed, shall be deemed to be made by a commodity for which no duty has been paid. And so much of the stock as shall be found increased shall be forfeited, and a quantity equal to the increased quantity shall be seized by the officer who shall discover the same; and the person in whose stock such increase shall be found, shall forfeit 20l. f. 29.

Retailer concealing.

The officer at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near, of a probable cause of suspecting the concealment of any such spirituous liquors), may enter into all such warehouses, shops, or other places, and by tasting, guaging, or otherwise take an account of the quantity and quality; and if any such retailer shall hinder or refuse the officer to enter, he shall forfeit 50l. 9 G. 2. c. 23. f. 9.

None to be sold but in entered places.

No such liquors shall be sold but in such warehouse, shop, cellar, or other place so entered; on pain of 40s. a gallon. 6 G. c. 21. f. 15.

And by the 11 G. c. 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place; on pain of forfeiting the same with the casks or other vessels, besides the said penalty of 40s. a gallon. f. 3.

Retailers to have no share in distilleries, &c.

No licensed retailer of brandy or other spirits shall be the owner of, or have any part or share in any distillery or rectifying house, or be concerned in the trade of a distiller, or rectifier, or compounder, on pain of 200l. 26 G. 3. c. 73. f. 54.

To be under the jurisdiction of the magistrates.

The justices of the peace and other officers, shall have the same jurisdiction over such retailers of spirituous liquors as they have over alehouse keepers. 12 & 13 W. c. 11. f. 18. 2 G. 2. c. 28. f. 10.

Hawking in the streets.

No person shall hawk, sell, or expose to sale any spirituous liquors about the streets, highways, or fields in any wheelbarrow or basket, or on the water in any boat or vessel, or in any other manner; or shall sell or expose the same to sale on any bulk, stall, or shed, or on or in any other place other than as above is allowed; on pain of 10l. And one justice on his own view, or on confession, or by proof by one witness, may convict him; whereupon he shall immediately pay the 10l.

10l. to the churchwarden or overseer: And on refusal or neglect the justice shall by warrant commit him to the house of correction to be kept to hard labour for two months, to be reckoned from the day of commitment; and he shall not be discharged till he have paid the sum, or till the two months be expired. If there be no informer, it shall be wholly to the use of the poor; otherwise half to the informer, and half to the poor. 9 G. 2. c. 23. f. 13.

Any one justice, on information on oath against such person, may (without any previous summons) issue his warrant for apprehending and bringing him before some justice where the offence was committed. 11 G. 2. c. 26. f. 4.

Any person may seize and detain him until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained before a justice of the peace, who shall proceed thereon as in cases where he is brought by the constable. 11 G. 2. c. 26. f. 5.

M. 13 G. 2. R. v. Crofts. A woman was convicted for selling gin; and it appearing that she was a feme covert, it was objected that she could not be convicted; for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of such a nature as can be committed by her alone, she may be prosecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy: In this case there may be imprisonment and being kept to hard labour. And by the court. We think the conviction is right; for this is not like the cases that found only in damages. The wife may be convicted for recusancy. And though she cannot have the benefit of the contract, yet she as well as the servant may do the act of vending. Besides, there would be a plain way to evade the act, if femes covert could not be convicted. 2 Str. 1121.

If any less quantity than two gallons shall be sold or delivered in any clandestine manner to any person, in any house, outhouse, stable, barn, or shed, or in other place, part of or belonging to any house or farm; in such case, the occupier or occupiers, (if more than one) consenting thereto shall be deemed retailers, and forfeit 100l., as selling without license. 11 G. 2. c. 26. f. 1.

Occupier of the house shall be liable.

If a person selling goods by retail, give away spirituous liquors to any servant or apprentice coming to his shop or house to buy, fetch, or carry away goods from their shops, he shall be deemed a retailer. 9 G. 2. c. 23. f. 16.

Persons giving away spirituous liquors.

Paying wages in
spirituous
liquors.

If any master, or other person, shall agree with any journeyman, workman, servant, or labourer, or other person employed by him or for him, to pay to him so much money for wages, and so much spirituous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages for any spirituous liquors; he shall be deemed a retailer, and forfeit 20*l.* over and above the other penalties, and such servant shall be entitled to his whole wages. *f.* 11.

Apothecaries
selling spirituous
liquors.

But nothing herein shall extend to physicians, apothecaries, surgeons, or chymists selling the same as medicines. 9 *G. 2. c. 23. f. 12.* 16 *G. 2. c. 8. f. 12.*

Selling in gaols
or workhouses.

No license shall be granted for retailing any spirituous liquors within any gaol, prison, house of correction, workhouse, or house of entertainment for any parish poor, and if any gaoler, keeper, or officer of any gaol, prison, or house of correction, or any governor, master, or officer of any workhouse, or house for the entertainment of any parish poor, shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols, &c. or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary from the shop of some regular apothecary, — he shall forfeit 100*l.*, half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 *G. 2. c. 40. f. 13.*

Any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such gaol, &c. may enter and search or impower by warrant any constable or other peace officer, to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to save and destroy the same. *f.* 14.

If any person shall bring or endeavour to bring any liquors distilled, spirituous liquors (except in the way of medicine as before mentioned,) into any such gaol, &c. the gaoler, &c. or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, there to be kept for any time not exceeding three months, unless he shall immediately pay down such sum not exceeding 20*l.* and not less than 10*l.* as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol, &c. or workhouse. *f.* 15.

The gaoler, keeper, master, and chief officer, shall procure a copy of the three preceding clauses, to be printed or fairly written and hung up in one of the most public places of his gaol house of correction or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40s. by warrant of one justice, on oath of one witness. Any justice may enter and demand a sight of it, and if it shall not be shewn to him hung up in some public place fair and legible, he shall immediately convict such person, and so from time to time as often as he shall think fit; half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place. *f. 16.*

No person shall recover any sum of money, debt, or demand on account of spirituous liquors, unless it shall *bonâ fide* have been contracted at one time to the amount of 20s. or upwards; nor shall any particular article in any account for distilled spirituous liquors be allowed, where the liquors delivered at one time shall not amount to the full value of 20s., and where no part of the liquors so sold shall have been returned or be agreed to be returned directly or indirectly; and if any retailer, with or without a license, shall take any pawn by way of security for payment of any money for such spirituous liquors, or strong waters, he shall forfeit 40s. for every pawn or pledge so taken, to be levied, by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such remedy for recovering such pawn, or the value thereof, as if it had never been pledged. *f. 12.*

Recovering debt
for spirituous
liquors;

or taking a
pledge for
security.

If any distiller or other person shall knowingly sell or deliver any distilled spirituous liquors, that the same may be unlawfully retailed, or to any unlicensed retailer, he shall forfeit 10l. and treble the value of the liquors, half to the king, and half to him that shall sue in the courts at *Westminster*. And if any person guilty of retailing such liquors shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be entitled to his share of the penalty, and indemnified against all penalties incurred by him before that time for selling spirituous liquors without license. *f. 11.*

Distiller deliver-
ing to unlicensed
retailers.

If any persons to the number of five or more shall in a tumultuous and riotous manner assemble to rescue any offenders against any act relating to spirituous liquors, or for licensing the retailers thereof, or to assault or wound any person who shall have given, or be about to give, any information against, or shall have discovered, or given evidence against, or shall seize or bring to justice any offender; he, his aiders, and abettors, shall be guilty of felony, and transported for seven years. *f. 28.*

Riotously res-
cuing offenders,
or assaulting in-
formers.

And

Obstructing
officers.

And if any person shall obstruct any officer in the execution of his duty in relation to this act, he shall forfeit 200*l.* in cases not otherwise by the act provided for. 43 G. 3. c. 81. *f.* 16.

Selling without
a permit, or
pedlars with one.

If any person shall offer any strong waters or spirituous liquors to sale, not having a permit; or if any hawker, pedlar, petty chapman, or other trading person, going from town to town or other men's houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such liquors to sale, although he have a permit; the person to whom they are offered to sale may seize and detain such liquors, and carry them to the next warehouse belonging to the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 G. 2. c. 35. *f.* 20.

Houses and
places may be
searched.

By 24 G. 2. c. 40. The commissioners or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any peace or parish officer, to enter and search the houses and other places where the offence shall be sworn to be committed, or in the occupation of the persons sworn to be guilty thereof; and they may break open the doors if they be not forthwith opened on demand, and seize all such distilled spirituous liquors as they shall there find, and detain the same till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. *f.* 6.

Officers neglect-
ing to seize.

When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running brandy, and shall be convicted thereof on his appearance or default by oath of one witness or confession; he shall forfeit 50*l.* 6 G. 2. c. 17. *f.* 10.

Constables ne-
glecting their
duty.

If any constable, or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 G. 2. or 10 G. 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20*l.* 11 G. 2. c. 26. *f.* 7.

Power of the
justices.

All the penalties not herein otherwise directed shall be sued for and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 G. 2. c. 40. *f.* 29. 26 G. 3.

(a) For which see *ante*, Sect. III.

c. 37. f. 82. 27 G. 3. c. 13. f. 38. 30 G. 3. c. 37. f. 7.
30 G. 3. c. 38. f. 9. 43 G. 3. c. 69. f. 4. & c. 81. f. 17.

And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5l., to be paid to the informers. 17 G. 2. c. 17. f. 21.

Reward where no penalty is levied.

No information shall be brought against a distiller for any false or mis-entry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling-house, within a week after laying the information. 12 & 13 W. c. 11. f. 17.

Limitation of actions.

The commissioners shall cause all foreign exciseable liquors seized for non-payment of duty, or for being prohibited to be imported, to be publicly sold, after condemnation to the best bidder, at such places as they shall think proper. 12 G. c. 28. f. 1.

Sale after condemnation.

All stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. 7 & 8 W. c. 30. f. 13. 28 G. 3. c. 37. f. 21.

Utensils liable.

The justices within the limits of the head office of excise in London shall once in every month transmit to the clerk of the peace a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court; which certificate shall be evidence upon any information relating to spirituous liquors. 24 G. 2. c. 40. f. 21.

Conviction to be kept amongst the records of the sessions.

Sect. V. (16.) *Starch, hair powder, and stone blue.*

[10 An. c. 26. f. 11. 13, 14, 16, 17, 19, 22, 23, 25—27. 29.—12 An. st. 2. c. 9. f. 20.—1 G. st. 1. c. 2. f. 6.—4 G. 2. c. 14. f. 1. 3—9.—23 G. 2. c. 21. f. 27—34, 36, 37.—26 G. 2. c. 32. f. 8.—5 G. 3. c. 43. f. 19.—10 G. 3. c. 44.—19 G. 3. c. 40. f. 3. 5—12, 16, 17, 19, 20, 22.—24 G. 3. c. 40. f. 29.—c. 41. sess. 2. f. 1. 7.—c. 48. sess. 2. f. 1—6. 16.—26 G. 3. c. 51. f. 1—3. 6—11. 14—26.—27 G. 3. c. 13.—27 G. 3. c. 31. f. 23.—28 G. 3. c. 37. f. 21—c. 73. f. 15.—42 G. 3. c. 93. f. 19.—43 G. 3. c. 68.—c. 69. f. 4.—52 G. 3. c. 139.]

By 43 G. 3. c. 68. *Sched. (A.)* upon every hundred weight of starch imported, a duty is imposed.

Duty on importation.

Any by 49 G. 3. c. 98. *Sched. (A.)* upon every cwt. of starch, a further duty.

Duty on home starch.

No person, within the limits of the head office of excise in London, shall be a maker of starch, unless he occupies a tenement

Who shall be a maker of starch.

tenement of 10l. a-year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and elsewhere, unless he pay to church and poor; and where there are no rates to church and poor, then to the rates on houses and windows; on the like penalties as for making starch without entry. 19 G. 3. c. 40. s. 1. 26 G. 3. c. 51. s. 20.

Starch-makers
to be licensed.

And by 43 G. 3. c. 69. *Sched. (A.)* every starch-maker shall take out a license for which he shall pay 5l. and shall renew the same annually ten days at least before the end of the year on pain of 30l. 24 G. 3. c. 41. *sess. 2. s. 1. 7.*

Persons in part-
nership.

But persons in partnership need only take out one license for one house. *Id.*

Places of making
to be entered.

No maker of starch shall erect, set up, alter, change, enlarge, or make use of any workhouse, storehouse, room, or other place for the making, drying, or keeping of starch, or for keeping any flour or meal, or other materials, proper to be made into starch, or use any vat, trough, kiln, stove, box, utensil, or other vessel for the making of starch, without first giving notice in writing thereof, and of his name or place of abode, (unless such notice has been before given,) at the next office, for the said duties. And if such maker shall make default herein, he shall, for each offence, forfeit 200l. 24 G. 3. c. 48. *sess. 2. s. 1.*

Summoning of-
fenders.

A summons left at the place where discovery shall be made of such offence for using any workhouse, &c. without making entries, directed to the person prosecuted by his right or assumed name, shall be as effectual as if delivered personally and directed to him by his proper name. 5 G. 3. c. 43. s. 19.

Rooms and ves-
sels to be num-
bered.

All rooms and places, vessels and utensils, shall be marked and numbered, at the discretion of the surveyor or supervisor, at the expence of the maker, on the penalty of 50l. 19 G. 3. c. 40. s. 12.

All flour, meal, and other materials for making starch, found in any private workhouse or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 An. c. 26. s. 22.

Names, &c. to
be put up.

Every starch-maker shall cause his name to be painted in large letters, of at least three inches in length, and shall put the same over the outward door, or in some conspicuous part of the front of his starch-house, with the addition of the word *starch-maker*, on penalty of 100l. 24 G. 3. c. 48. *sess. 2. s. 3.*

Officers to enter
and survey.

And the officer shall at all times, by day or night, and if in the night in the presence of a constable, or other peace officer be permitted on request to enter the house, work-

house,

house, warehouse, or other place used by any maker of starch; and by gauging or weighing the starch, and gauging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demanded in writing, 12 G. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 26. f. 14.

The maker before he begins to empty or wash out any of the vats by him used in preparing or making of starch, shall give to the officer 12 hours notice if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to begin; and if he shall not begin at the hour, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100l. 19 G. 3. c. 40. f. 6.

Notice of emptying the vats.

He shall, (on the like pain) after he has begun to empty or wash out such vats, proceed and continue to empty or wash out the same without leaving off, (except for one night,) and shall finish the same within 48 hours from the time of beginning. 26 G. 3. c. 51. f. 15.

And as soon as the vats shall be emptied, or washed out, and the water put into frames or tubs, or other utensils used for preparing and making the same into starch, the said waters shall remain therein undisturbed for 48 hours at least, and during that time the slimes and wash shall not be taken off the same. 19 G. 3. c. 40. f. 7.

If the maker, whilst the starch is in operation and under water, mix any of the starch waters of one making with those of another making, although in the presence of an officer, he shall forfeit 100l.: But slimes which have been entered as such, for the space of 24 hours may be mixed in the presence of an officer. 26 G. 3. c. 51. f. 18.

Mixing whilst in operation.

When the maker shall be desirous to take off from the four waters the slimes or wash so put into the frames or tubs, after the same shall have remained undisturbed for 48 hours, he shall give to the officer 12 hours notice within the bills, (elsewhere 24 hours,) of the particular time and hour when he intends to take off such slimes and wash. And if he shall not begin at the time, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100l. 19 G. 3. c. 40. f. 8.

Notice of taking the waters out of the tubs.

And he shall (on the like pain,) after he has begun to take off the slimes or wash from the four waters continue to shift the said four waters until the whole is finished, and shall finish the same within 12 hours from the time of beginning. 26 G. 3. c. 51. f. 15.

When

When the taking off the slime and wash from the four waters is finished, and the green waters shall be put into the tubs or other utensils used for making into starch, they shall remain undisturbed for 24 hours; and that the officers may be able to ascertain when the said green waters were put into the tubs, every maker shall give notice in writing to the officer of the time he finished shifting such four waters; on pain of 100*l.* in either case. *f.* 16.

When the slime shall be taken off as aforesaid, and put into any tubs or other utensils, the same shall remain in such tubs or utensils for 24 hours. And if the maker shall disturb the same during the said times of 48 hours and 24 hours respectively, he shall forfeit 100*l.* 19 *G.* 3. *c.* 40. *f.* 9.

Boxing.

The maker shall use regular square or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove, on pain of 10*l.* for every offence. 4 *G.* 2. *c.* 14. *f.* 1.

And he shall, if within the bills, give 12 hours, elsewhere 24 hours, notice in writing to the officer, of his intention to put any green starch into such boxes: And he shall, in such notice, express the particular frame or tub from which he intends to box any starch; and when he shall begin to box, he shall continue to proceed to box the same, till the whole quantity in such frame or tub shall be boxed: And if he shall neglect to give such notice, or shall not proceed or continue after such notice given; he shall forfeit 200*l.* 4 *G.* 2. *c.* 14. *f.* 1. 19 *G.* 3. *c.* 40. *f.* 11.

If the charge be made by gauging it before it be dried in the stove, then every box of green starch, or starch before it be dried containing 57 inches in length and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds avoirdupois of starch dried and perfectly made. 1 *G.* 3. *c.* 2. *f.* 6.

If the officer shall miss any quantity of starch, of which an account had been taken by gauge, whilst the same was in the four waters or slimes, and before it hath been put into the boxes; he may charge the maker according to such gauge taken. 19 *G.* 3. *c.* 40. *f.* 10.

Drying in the
stove.

When the maker shall have broken the starch from his boxes, he shall deliver to the officer an account in writing of the true number of pieces broken from such box, distinguishing the size of the different pieces, under the denominations of large, middling, and small; and how many pieces of each denomination, are contained in each breaking from the boxes. And whenever he shall put his starch, when scraped, or when put into the papers, into the stove for drying the same, he shall place the several pieces so put into the stove in such manner, as that the officers may have ac-

cess to and be able to count the same. And he shall provide ladders, and assist the officer in taking an account of the said several pieces in the stove; and he shall not, for two hours after the officer hath entered the stove, stir the fire under the stove, nor throw upon the pan of such stove any dirt, meal, or other ingredient, whereby a smoke may be raised, or the officer hindered in counting the pieces. And if he shall offend in any of the premises, he shall forfeit 200l.

f. 13, 14, 15.

When the maker intends to break down any piece, into scrapings or otherwise, he shall give to the officer 12 hours notice if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to break down such pieces: and if he shall not begin at the time, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100l. *f. 16.*

Breaking down
into scrapings.

If he be desirous to remove such starch from the stove, he shall give the like notice; and if he shall begin to remove any starch from the stove after the same is dried, without giving such notice, he shall forfeit 200l. *26 G. 3. c. 51. f. 19.*

Removing from
the stove.

If the officer shall find in the stove any piece or pieces drying of which no account had been taken in the box, the same shall be deemed starch whereof no account had been taken; and the maker shall forfeit for every offence 100l. *29 G. 3. c. 40. f. 17.*

By *26 G. 3. c. 51.* All starch, before it be put into any stove or place to dry, (except for crusting,) shall be put in papers, and the maker shall, before he begins papering such starch for drying, give to the officer 12 hours notice in writing if within the bills, (elsewhere 24 hours,) of the particular time and hour when he intends to begin, and shall in such notice express the number of pieces intended to be papered, and where intended to be dried; and if he shall not begin to paper such starch at the time or within one hour, such notice shall be void. And every piece of starch when papered shall be tied up with strings, crossing each other on that side of the piece where the ends shall be folded, and there shall be pasted thereon a label or piece of thin paper three inches long and three inches broad at least, of a different colour, upon which the officer shall put a stamp or seal, in such manner as to prevent opening such paper of starch without tearing the said piece of stamped paper: And every maker offending herein shall forfeit 100l. *f. 1, 2.*

To be papered
and stamped.

If any person shall forge or counterfeit any such stamp, or seal, or the impression of the same on the papers, he shall be guilty of felony without benefit of clergy; or shall knowingly sell any starch with such forged or counterfeit stamp, or seal, or impression, or affix any paper duly stamped to any piece

Forging or using
forged stamps.

piece of starch other than that which was originally inclosed therein; he shall forfeit 500l. 26 G. 3. c. 51. § 14.

Damaged stamps
may be replaced.

When the paper wherein such starch is contained shall be broken or damaged, and the maker shall be desirous of having the same repapered and restamped, he shall give (if within the bills 12 hours, elsewhere 24 hours) notice to the officer, who on being satisfied that it was damaged by accident may restamp the same as before. § 11.

Starch unstamp-
ed and scrapings.

If any piece of starch papered and not stamped, or any piece not papered in manner as aforesaid, or any scrapings or loose starch shall be found in any stove or place for drying, the same shall be forfeited; and the maker in whose possession the same is found shall forfeit 200l. But this shall not extend to pieces of starch put into the stove for crusting, only before the same shall be scraped. § 3.

Within one hour after such starch shall have been papered and stamped, all scrapings belonging thereto shall be weighed and taken account of and put into water, and shall not be mixed with other starch, or preparation for making starch then in operation, and when dissolved shall be strained through a sieve, and the officer shall take an account thereof as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same as required by 4 G. 2. c. 14. and 19 G. 3. c. 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of; or shall wilfully disturb or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: Or if he shall, in order to increase the quantity of scrapings before the same be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200l. § 9, 10.

Maker to keep
scales and
weights.

The maker shall keep sufficient and just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10l. 10 An. c. 26. § 16.

And by the 10 G. 3. c. 44. If he shall use insufficient scales or weights, he shall forfeit 100l.; but not to be prosecuted both on this and the former act. And by the 28 G. 3. c. 73. § 15. the same shall be forfeited and may be seized by any officer.

Removing be-
fore surveyed.

No maker of starch shall remove any starch of which no account hath been taken by the officer from the place where it was made, without giving to the officer within the bills 24 hours

24 hours notice, and elsewhere two days notice. 10 *An.* c. 26. f. 19.

By 19 G. 3. c. 40. If he shall remove any starch after it is dried out of the stove or drying place before it has been weighed and taken account of by the officers; he shall forfeit 200l. f. 19.

No starch exceeding 28lb. shall be removed or carried by land or water, unless the word *starch* be painted or marked on the package in legible letters three inches long, on pain of forfeiture thereof, together with the chests, casks, sacks, or other package containing the same; and the boat or vessel, horses or other cattle, carts or other carriages made use of in removing thereof. 24 G. 3. c. 48. *sess.* 2. f. 4.

Removing upwards of 28lb.

If any dealer in starch shall receive any quantity exceeding 28lb. of starch not marked as aforesaid, he shall forfeit 200l. *Id.* f. 5.

Dealers receiving above 28lb.

All starch not being papered and stamped as before directed, and all loose starch exceeding 28lb., and scrapings of starch, which shall be found in the possession of any maker of (or dealer in, 27 G. 3. c. 31. f. 23.) starch, or any person for his use, or shall be found removing by land or water, shall be forfeited, and may be seized by any officer of the said duties; together with the package containing the same, and the boat or vessel, horses or other cattle, carts or other carriages made use of in removing thereof, and such person shall forfeit moreover 10s. for every pound. But not to extend to starch made into hair powder, or to any quantity taken out of the papers in the possession of any hair powder maker, or blue maker, or to any quantity not exceeding 28lb. in the possession of any dealer in starch; nor to the returns from the sieves that may be in the possession of any maker of hair powder. 26 G. 3. c. 51. f. 13.

Loose starch above 28lb. and scrapings may be seized.

If any officer of the duties upon starch or of the customs shall have any cause to suspect that starch is privately making in any place or hid or concealed with intent to defraud the duties, then, upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant to authorize such officer by day or night, (but if the night in presence of a constable or other peace officer) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it; and unless the party make it appear that the duty has been paid, he shall forfeit 50l.; and if any person obstruct the officer, he shall forfeit 100l. 4 G. 2. c. 14. f. 4. 23 G. 2. c. 21. f. 34.

Concealing or privately making.

By the 19 G. 3. c. 40. If the maker shall conceal any starch with intent to deceive his majesty of the duties, he shall forfeit 100*l.* *f.* 20.

Assisting in private or unentered places.

When any officer of excise shall discover that the making of starch is carried on in any private workhouse and without notice given, and at the same time discover that any person shall knowingly assist in making starch in any private or unentered place, or shall be any ways concerned in carrying on such private making of starch; every person so offending shall forfeit 3*l.* over and above all penalties that the proprietor may be liable to. And any officer of excise and all other persons acting in his aid may arrest and convey him before a justice, who, on confession or proof on oath of one witness, may convict such offender, who shall immediately pay the said penalty, and on his refusing or neglecting to pay the same he shall be committed to the house of correction for six months, to be reckoned from the day of conviction, unless the penalty shall be sooner paid. And on conviction for a second offence, he shall forfeit 6*l.*; and on non-payment shall be committed in like manner for one year, unless the same be sooner paid. 24 G. 3. c. 48. *sess.* 2. *f.* 2.

Officer to charge for materials missing.

The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become thereof, he may charge the maker with such quantity of starch as such materials so missing in his judgment would reasonably have made; not exceeding 25 pounds weight of starch, for every bushel of such ingredients mixed or unmixed. 10 *An. c.* 26. *f.* 17.

If any officer shall miss any starch, or materials for making thereof, of which a gauge had been taken while in the green water or slimes, and before put into the boxes, and shall not receive satisfaction what is become of the same, he shall charge the maker according to the gauge so taken, and such maker shall pay the duty so charged. 26 G. 3. c. 51. *f.* 17.

Starch surveyed to be kept separate.

The maker shall keep all starch by him made and not surveyed separate from other starch which hath been surveyed for 24 hours after making within the bills, and for two days elsewhere, unless it shall be sooner surveyed; on pain of 5*l.* 10 *An. c.* 26. *f.* 20.

Entry of starch made.

The maker shall weekly make entry in writing at the next office of all the starch by him made within each week, setting forth the weight, and how much was made at each time on pain of 5*l.* Which entry shall be on oath of the maker

or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. *Id.* f. 11. 19 G. 3. c. 40. f. 3.

But he shall not be obliged to go further, either to make entry or payment, than to the next market town. 19 G. 3. c. 40. f. 5.

Such maker shall, within one week after such entry, clear off the duties on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 An. c. 26. f. 13. Payment of the duties.

Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 G. 2. c. 21. f. 29. Carrying coast-wine.

No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* f. 27. 42 G. 3. c. 93. f. 19. Importation and exportation.

But on information brought against such master, (referring to 23 G. 2. c. 21. f. 29. *supra.*) he may detain the wages of the mariners till it be determined; and if it shall appear that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 G. 2. c. 32. f. 8.

The officers of excise (in like manner as the officers of the customs) may go on board any vessel, within the limits of any port, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Starch that hath paid the duties may be *exported*; and the duties shall be drawn back. 10 An. c. 26. f. 25, 26, 27. 27 G. 3. c. 13.

Every person who shall intend to export any starch upon which all the duties have been paid, and shall have given notice of packing up the same as directed by 25 G. 3. c. 74., the officer who shall attend to see the said starch packed up shall stamp or mark every paper of starch, on the label or piece of paper to be affixed thereto, with the word *exportation*; but the same shall not be permitted to be packed up or exported, unless it shall have the piece of paper stamped, as by this act directed, entire and unbroken. And if any piece

of starch so marked for exportation shall be found upon land, (except where packed up before shipped, or in removing from thence to be put on board,) the same shall be forfeited, and may be seized by any officer of excise or customs. 26 G. 3. c. 51. s. 5. 7, 8.

The officers of excise or customs may seize any starch or hair powder, with the horses and package, that shall be found in any ship or vessel, or shall be carrying in any cart or waggon or other carriage, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5l. for every hundred weight. 4 G. 2. c. 14. s. 3.

By the 23 G. 2. c. 21. It is enacted that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5l. for every 100 pounds weight, and so in proportion, and also the goods and package shall be forfeited. s. 30.

If any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other cattle and carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5l. for every hundred pounds weight; and so in proportion. s. 31.

If any person shall knowingly harbour, keep, or conceal, or knowingly permit to be kept, harboured, &c. any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claim any property therein or not, forfeit 50l. for every hundred pounds weight; and so in proportion, together with the goods and package. s. 32.

Where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time

of proceeding to trial and condemnation of the same by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*. *f. 33.*

No perfumer, peruke maker, barber, or dealer in *hair powder*, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talc, plaister of Paris, whiting, lime, or other thing of the like nature, (sweet scents only excepted), on pain of forfeiting the same and 50*l.* 12 *An. ft. 2. c. 9. f. 20.*

Making hair powder.

By the 4 *G. 2. c. 14.* If any maker of *hair powder*, or other such person, shall mix any powder or alabaster, plaister of Paris, talk, chalk, whiting, lime, or any other material, (rice first made into starch, and sweet scents only excepted,) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any of the said materials, or any other materials (except starch or powder of starch, or of rice first made into starch,) and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the hair powder so mixed and 20*l.* *f. 5.*

Every maker of *hair powder* shall make entry in writing at the next excise office of his place of abode, and of his workshop or other place made use of for making hair powder; on pain of 20*l.* 4 *G. 2. c. 14. f. 6.*

Places of making hair powder to be entered.

The officer, in the day time, on his request, may enter places used for making *hair powder*, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. *f. 7.*

Officer to enter the same and survey.

And if such starch maker, or dealer, shall not on request suffer him to enter and examine, and take samples (on offering to pay the common price); he shall forfeit 20*l.* *Id. f. 9.*

If any starch maker, or dealer in hair powder, shall have in his possession for making, mixing, or counterfeiting hair powder any alabaster, plaister of Paris, talk, chalk, whiting, lime, or other material besides starch, or powder of starch, or of rice first made into starch; for the making, mixing, or counterfeiting of hair powder, he shall forfeit the same, and 10*l.* *f. 8.*

Persons having in his possession materials for adulterating hair powder.

Every person who shall be maker of *stone blue* for sale, shall make an entry in writing at the next excise office of his name and place of abode, together with the workshop or place that shall be made use of in making or keeping stone blue, or materials

Making of stone blue.

terials for making thereof; on the penalty of 50*l.* 26 G. 3. c. 51. *f.* 21.

Any officer by day at his request may enter such workshop or place, and examine every parcel of stone blue, and take samples thereof, paying a reasonable price for the same; and if any person shall refuse to permit him to enter such place, or hinder him in taking such samples, or shall assault, molest, or hinder any officer in the execution of this act, he shall forfeit 50*l.* *f.* 22. 25, 26.

No maker shall begin to make any stone blue for sale from any flour, meal, or other ingredients (other than for colouring the same) except starch for which the duties have been paid, on pain of forfeiting thereof, (except such colouring,) together with the boxes, tubs, &c. containing the same, and also 100*l.* *f.* 23.

No starch to be received by stone blue makers but in stamped papers.

If any maker of stone blue or hair powder for sale shall receive into his possession any starch in papers not stamped, or any loose starch or scrapings, he shall forfeit 10*s.* a pound; and moreover the same shall be forfeited, and may be seized by any officer. And if any maker of stone blue or hair powder shall keep above 28*lb.* of starch or hair powder in any unentered place, the same shall be forfeited, and also 50*l.* *f.* 24.

Power of the justices.

All the said forfeitures shall be sued for, levied, and mitigated, as by the laws of excise (*a*), or in the courts at *Westminster*; and be distributed half to the king, and half (and on the 10 *An. c.* 26. half with full costs) to the prosecutor. 10 *An. c.* 26. *f.* 29. 24 G. 2. c. 40. *f.* 29. 19 G. 3. c. 40. *f.* 22. 24 G. 3. c. 48. *f.* 16. 26 G. 3. c. 51. *f.* 26. 43 G. 3. c. 69. *f.* 4.

Obstructing officer.

If the maker shall obstruct such officer in the execution of his duty, he shall forfeit 100*l.* 24 G. 3. c. 48 *f.* 6.

Proof to lie on the claimer.

Where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 G. 2. c. 21. *f.* 34

Appeal.

If the party be not satisfied with any judgment of the justices, on the act of 23 G. 2. c. 21. above mentioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized.) *f.* 36.

(*a*) There is a particular method directed for levying the penalties imposed by 23 G. 3. c. 21.; which being the same as for *Candles*, see *ante*, this title, Sect. V. (4.)

The mitigation on the said act of 23 G. 2. shall not reduce the penalty to less than a fourth part, over and above the charges. *f. 37.* Mitigation.

And all starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. *10 An. c. 26. f. 23. 28 G. 3. c. 37. f. 21.* Utensils liable.

Sect. V. (17.) *Stone Bottles.*

By the 52 G. 3. c. 139. certain duties are granted upon stone bottles.

For every hundred weight of stone bottles not exceeding two quarts measure imported from any other place beyond the seas, an excise duty of two shillings and sixpence:

And for every hundred weight of stone bottles not exceeding two quarts measure made in *Great Britain*, two shillings and sixpence.

And be it further enacted, that the said duties, and also the drawbacks granted by this act, shall in every case be understood and deemed and taken to apply in the same proportion, and after the same rate to any greater or less quantity than a hundred weight of stone bottles. *f. 2.*

Within 20 days next after the master or purser of the ship or vessel wherein any such stone bottles shall be imported into *Great Britain*, shall have or ought to have made a just entry or report upon oath of the burthen, contents, and lading of such ship or vessel pursuant to the 13 & 14 C. 2. the proprietor, importer, or consignee shall make due entry with the collector of excise in the place where such shall be so imported, of all such on board of such ship or vessel belonging to such proprietor, &c. and shall then and before the landing thereof, satisfy the duty by this act imposed in respect thereof, and shall also within such 20 days land all such bottles, on pain to forfeit for every neglect or refusal to make due entry of such stone bottles, or to pay the duty in respect thereof, or to land the same according to this act, all such bottles, and which shall be seized by any officer of excise. *f. 3.*

Every maker of stone bottles before he shall make or manufacture any, shall make a true and particular entry in writing of every house, workhouse, millhouse, warehouse, shed, shop, room, and place by him respectively used, or intended to be used for the wetting, softening, grinding, preparing, mixing, or keeping of any clay, earth, or other materials commonly used or fit to be used in the making or manufacturing of stone bottles, or in the making or manu-

facturing, hardening, drying, baking, burning, or laying or keeping of any such bottles at the office of excise within the limits whereof such house, &c. workhouse, millhouse, warehouse, shed, shop, room, or place respectively shall be; and every maker shall also make a true and particular entry in writing of every cone, kiln, stove, vat, cistern, mill, lathe, trundle, or other machine, implement, vessel, or utensil by him kept or used, or intended to be used in the making, manufacturing, turning, hardening, drying, baking, or burning of any such bottles at the office of excise, within the limits whereof such cone, &c. respectively shall be or used respectively, and if any maker shall use any house, &c. in the wetting, &c. any clay, &c. commonly employed, or fit to be employed for the making or manufacturing of stone bottles, or for or in the making, &c. &c. without having made thereof such entry as in that behalf aforesaid, or shall use any cone, &c. in the making, &c. any stone bottles without having made such entry as aforesaid, the maker so offending shall for every such offence forfeit one hundred pounds, together with all the stone bottles and other materials aforesaid, which shall at any time be found in any such house, &c. or in or on any such cone, &c. respectively, whereof no such entry as is in that behalf aforesaid shall be made, and the same shall be seized by any officer of excise. *f. 4.*

Duties shall be under the management of the commissioners of excise. *f. 5.*

The officers of excise, or any or either of them, from time to time, and at all times between the hours of 5 in the morning and 11 at night, without the presence of a constable or other lawful officer of the peace, and between the hours of 11 at night and 5 in the morning, then in the presence of a constable or other lawful officer of the peace, may enter into all and every the houses, workhouses, millhouses, warehouses, sheds, shops, rooms, and other places entered or used by any maker of stone bottles for the making, &c. of any stone bottles, or for or in the wetting, &c. of any clay, earth, or other material commonly used, or fit to be used in the making of stone bottles, and by weighing or otherwise, to take an account of the weights, kinds, and quantities of the stone bottles made, manufactured, hardened, dried, baked, burnt, or found in the possession of such maker from time to time. *f. 6.*

Every maker being desirous to put any stone bottles in any kiln, stove, or oven for the purpose of baking or burning the same, shall six hours next before the beginning to deposit any such into such kiln, &c. give to the officer under whose survey he shall be, a notice in writing of such his intent, specifying in such notice the particular kiln, &c. in which such
stone

stone bottles are intended to be deposited, and the particular time and hour at which it is intended so to deposit the same; and if any such maker shall neglect or refuse to begin so to deposit such stone bottles specified in such notice in the kiln, &c. specified in such notice within one hour after the time therein mentioned, then such notice shall be void, and such maker shall give a fresh notice in writing before he shall put any stone bottles in any such kiln, &c.; and if any maker shall put any into any kiln, &c. without having given such previous notice, he shall for every such offence forfeit 5*ol.* *f.* 7.

Before any maker shall begin to close or stop up any kiln, &c. containing any stone bottles, he shall deliver to the proper officer a declaration in writing specifying the true numbers of the stone bottles of each particular size, kind, or denomination; that is to say, the names by which the stone bottles of each particular kind are commonly called, with the reputed measure of such stone bottles of each particular size, and the number thereof respectively put and contained in each such kiln, &c.; and if he shall neglect or refuse to deliver such declaration, he shall for each such offence forfeit 5*ol.* : Provided always, that no maker shall incur the said last mentioned penalty by reason of any declaration by him delivered, not specifying the true numbers of the stone bottles of any particular size, kind, or denomination respectively laid in any such kiln, &c., provided the number of that particular kind or denomination respectively specified in such declaration shall not vary more than at and after the rate of five *per centum* from the true numbers of the stone bottles of such particular size or kind respectively laid, &c. in such kiln, &c. *f.* 8.

When any maker shall be desirous to prepare or kindle any fire to heat his kiln, stove, or oven into which any stone bottles are intended to be put for the purpose of baking or burning the same, he shall give to the officer under whose survey he shall then be, six hours notice in writing of his intent : Provided, that no maker shall kindle any fire for the purpose aforesaid, or heat any such kiln, &c. for that or any other purpose till after one hour, to be computed from the time when the putting of the stone bottles shall be finished; and if any such maker shall so kindle or heat for that or any other purpose till after one hour as aforesaid, he shall for each such offence forfeit 5*ol.*; and if he shall neglect or refuse to prepare and kindle such fire within one hour after the time mentioned, then such notice shall be void, and he shall give a fresh notice in writing to such officer before he shall prepare or kindle any fire in or under any such kiln, &c.; and if any such maker shall so kindle
without

without previous notice as aforesaid, he shall for every such offence forfeit 50*l.* *s.* 9.

Every maker shall provide convenient weighing room in or adjoining to each kiln, &c. *s.* 10.

Every maker shall keep sufficient and just scales and weights at the place where he shall manufacture stone bottles, and also permit any officers of excise to use the same for weighing and taking an account of, and re weighing the stone bottles which shall at any time be made by or in the possession of such maker; upon penalty for every neglect and refusal, of forfeiting 100*l.*; and if in the weighing or reweighing he shall use or cause or procure or suffer to be used any false, unjust, or insufficient scales or weights, or shall practise any contrivance by which any such officer shall or may be prevented or hindered or delayed in taking the just and true weight of any such stone bottles, such maker shall for each such offence forfeit 100*l.*, and all such scales and weights. *s.* 11.

Every maker desirous to draw or take any stone bottles from or out of any kiln, &c. to him belonging, shall twelve hours next before such beginning to draw, give to the officer under whose survey he shall then be, a notice in writing of his intent, specifying the particular kiln, &c. out of which such stone bottles are intended to be drawn, and the particular time at which it is intended to be given, to draw or take the same from such kiln, &c.; and if any officer shall attend at the time mentioned in such notice, such maker shall so soon as such officer shall so attend, immediately with a proper number of his workmen begin to draw such stone bottles out of such kiln, &c. and shall without any unnecessary delay, and with a proper number of his workmen or servants, proceed until the whole shall be drawn; and every maker shall, so soon as any stone bottles not exceeding two quarts measure shall be drawn out, remove, carry, and convey directly into the said weighing room, and shall forthwith lay the same in the said weighing room, and shall forthwith lay, put, and place the same in such manner that all may, so far as the nature of the case will admit, be the most easily viewed and examined, and the numbers of the several sizes, sorts, and denominations respectively be ascertained by any officer; and such maker shall immediately on the whole of such last-mentioned stone bottles being so removed into the said room, and put as aforesaid, and if the proper officer shall then be in attendance, and if not, then on being required by such officer so to do, proceed to weigh and shall weigh the whole of such last-mentioned stone bottles in the said room with such scales and weights as aforesaid, in the presence of such officer; and such maker shall be charged with and pay the duty in respect of all such as are unbroken, according to such weight;

weight; and if, having given such notice and begun to draw, he shall not, if any officer shall so attend at the time specified in such notice, without any unnecessary delay and with a proper number of workmen proceed in such drawing as aforesaid, or if any maker shall not, as his stone bottles not exceeding two quarts measure shall be drawn out, remove as aforesaid, or shall not deposit as aforesaid in the said room, and in such manner as aforesaid, or shall not proceed to weigh as aforesaid, he shall forfeit 100l.; and if any maker shall neglect or refuse to begin to draw at the time mentioned in such notice, or within one hour after that time, such notice shall be void, and he shall give a fresh notice in writing to such officer: Provided always, that no maker give any such notice to draw except in the day time, and that between the hours of 6 in the morning and 6 in the afternoon, and that every notice given for drawing other than in the day-time and at the hours aforesaid shall be void. *f. 12.*

In the weighing as aforesaid the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to such maker 1lb. upon each 100lbs. so weighed. *f. 13.*

All stone bottles chargeable with the said duties shall be charged with the said duties by the proper officer so soon as the same shall be baked or burned; and if any maker of stone bottles, or his workmen or other persons, shall molest or obstruct any officer in weighing or taking such account; he or they shall for each such offence forfeit 100l. *f. 14.*

Every maker whose stone bottles not exceeding two qts. measure shall have been weighed by any officer, shall, for six hours after, keep such stone bottles in the said weighing room, and in the same state and position in which they were left by the surveying officer unless sooner re-weighed by the respective surveyors or supervisors, to the end that the said surveyors or supervisors may have an opportunity to weigh or re-weigh the same; and the said surveyors or supervisors shall weigh or re-weigh all such stone bottles; and if upon the re-weighing any additional weight shall be found, such additional weight shall be charged with the duties by this act imposed; and if any such maker shall neglect or refuse so to keep or continue the same when weighed by the proper officer, or shall remove or cause to be removed from such weighing room, any stone bottles before the end or expiration of six hours next after the same shall have been so weighed as aforesaid, unless the same shall have been sooner re-weighed as aforesaid, he shall, for each such offence, forfeit 100l. *f. 15.*

Every maker shall, so often as he shall be thereunto required by the officer under whose survey he shall then be, or by the surveyor or supervisor, with a sufficient number of his workmen,

workmen or servants, assist to the utmost of his power such officer or surveyor or supervisor in weighing and taking an account or in re-weighing and taking an account of all stone bottles of such maker, on pain of forfeiting for every neglect or refusal 100*l.* *f.* 16.

If any maker shall convey away stone bottle or bottles not exceeding two quarts measure from any kiln, &c. before the proper officer shall have weighed the same, or shall neglect or refuse to produce any such to such officer that he may weigh the same, or if any person shall fraudulently deposit or conceal any such stone bottle or bottles with intent to defraud his majesty of any of the duties, he or any other person so offending shall for each such offence forfeit 100*l.* *f.* 17.

Every maker shall at all times keep all stone bottles in custody or possession, and which shall not have been weighed according to this act, separate from all stone bottles weighed, upon pain of 100*l.* for every offence. *f.* 18.

Every maker shall once in every six weeks make a true entry in writing at the office of excise within the limits whereof such stone bottles shall be made, of all the stone bottles not exceeding two quarts measure by him made within such six weeks; and such entries shall contain the true numbers and sorts thereof, with the reputed measures of each particular sort or denomination, with the aggregate weight of the total number so made within such six weeks, on pain of forfeiting for every neglect to make such entry 100*l.*; which entry shall be verified upon oath by the maker by or for whom such shall have been made, or his chief workman or servant employed in making the same: Provided that no such maker shall be obliged to go further than the market town next to the place where such stone bottles shall be made for the making of any such entry as aforesaid; which oaths shall be administered by the proper collector, surveyor, or supervisor without any fee or charge for administering the same. *f.* 19.

Every maker shall from time to time within six weeks after he shall make or ought to have made such entry as aforesaid, clear off all the duties for all such stone bottles by him made, upon pain of forfeiting double the amount of such duties. *f.* 20.

Any officer of excise may take a sample or samples of any stone bottles or other earthen ware, either baked or unbaked, or burnt or unburnt, at any time in the possession of any maker, paying for the same, if demanded, the value or wholesale price thereof; and if any maker shall refuse to permit any such officer to take as aforesaid, upon his tendering such price for the same (if demanded) he shall, for each such offence, forfeit 100*l.* *f.* 21.

If any stone bottles shall be deposited or concealed in any place with intent to defraud his majesty of any of the duties, all such shall be forfeited, together with the packages containing the same; and they may be seized by any officer of excise, and the person in whose custody the same shall be found shall forfeit 50*l.*; and the better to enable such officer to discover such stone bottles so forfeited, if any such officer shall have cause to suspect that any such shall be so deposited or concealed in any place whatsoever, then, if such place be within the limits of the chief office of excise, upon oath made by such officer before the commissioners of excise, or any two of them, or before one justice, of the county, &c. where such place shall be in any part of *G. B.*, upon oath by such officer before such justice where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners or any two of them, or the justice, as the case may require, before whom such oath shall be made, if he or they shall judge it reasonable, by special warrant to authorize such officer by day or by night, (but if in the night, then in the presence of a constable or other lawful officer of the peace,) to enter into all and every such place and places where he or they shall so suspect such stone bottles to be so deposited or concealed, and to seize and carry away all such which he or they shall then and there find so forfeited, together with the packages containing the same. *f. 22.*

If any maker shall for the making, manufacturing, hardening, drying, baking, burning, laying, or keeping of any stone bottles, make use of any private or concealed cone, kiln, stove, or oven, or any private or concealed vat, cistern, mill, lathe, trundle, or other machine, implement, utensil, or place whatsoever, other than his, her, or their known cone, &c. entered for that purpose; every such maker shall for each such offence forfeit 100*l.* *f. 23.*

Every bottle made of earthen or stone ware, or of earth or clay, the mouth or orifice of which shall not exceed in diameter the diameter of the neck thereof by more than one quarter of an inch, and which shall not exceed two quarts in measure, and no other, shall be deemed and taken to be a stone bottle within the meaning of this act. *f. 24.*

Allows a drawback upon exportation. *f. 25.*

All the stone bottles and all the materials and implements and utensils for the making thereof in the custody or possession of any maker, or of any person to the use of or in trust for any such maker, are hereby made chargeable with all the duties in arrear and owing by such maker for any stone bottles made by him, and shall also be liable to satisfy all penalties and forfeitures incurred by such maker for any offence against

against this act; and it shall be lawful to levy such debts, &c. on such stone bottles, materials, and utensils, or any of them, and to use such proceedings as may be lawfully done in relation to stone bottles, in case the debtors or offenders were the true and lawful owners of the same. *f. 26.*

Persons being makers or interested in the trade shall not act as a justice in any matter concerning the execution of this act. *f. 27.*

If any person whatsoever shall assault, resist, molest, or hinder any officer of excise in the due execution of this act, or of any of the powers hereby given to any such officer, or shall by force after any such officer shall have seized any stone bottles, or any clay, earth, or other material aforesaid, or any vat, &c. or other machine, &c. aforesaid, as forfeited by virtue of this act, rescue any such stone bottles, &c. &c. or shall attempt so to do, such person so offending shall for each such offence, forfeit 20*l.* *f. 28.*

If any person shall give or offer to give any bribe, recompence, or reward whatsoever to any officer of excise, in order to corrupt, persuade, or prevail upon any such officer, either to do or perform or to neglect or omit to do or perform any act or thing whatsoever, belonging to the business or duty of such officer in the execution of this act, or to connive at or conceal any fraud relating to any of the duties by this act imposed, or not to discover the same, every such person so offending shall, for each such offence, (whether such offer or proposal be accepted or not) forfeit 50*l.* *f. 29.*

Any person convicted of wilfully taking a false oath in any case in which an oath is required to be taken by virtue of this act, shall be liable to the pains and penalties for wilful and corrupt perjury. *f. 30.*

All fines, &c. imposed by this act shall be sued for, &c. according to the laws of excise, or by action of debt, &c. one moiety to the informer or him who shall sue, and one to the king. *f. 31.*

The powers of other excise acts extended to this. *f. 34.*

Sect. V. (18) *Sweets.*

[7 & 8 W. c. 21. f. 5. — 10 & 11 W. c. 21. f. 5. — 6 G. c. 21. f. 22. — 10 G. 2. c. 17. f. 4. — 24 G. 3. c. 41. f. 2. f. 7. 11. — 26 G. 3. c. 74. f. 7. — 28 G. 3. c. 37. f. 32. — 30 G. 3. c. 38. f. 6 — 10. 14. 16. — 32 G. 3. c. 59. f. 9. — 43 G. 3. c. 69. — c. 81.]

License for
making sweets.

By 43 G. 3. c. 69. *Sched. (A.)* Every maker of any kind of sweets or made wines, other than mead, for sale, shall take out a license, for which he shall pay 5*l.* and shall renew the
same

same annually, ten days at least before the end of the year ; on pain of 50*l.* 24 G. 3. c. 41. *sess.* 2. *f.* 7.

But persons in partnership need only take out one licence for one house. *Id.*

Every person who shall sell or use any materials used in the making of wines, and in whose custody any quantity exceeding two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 W. c. 21. *f.* 5.

Who shall be deemed a maker.

And by the 43 G. 3. c. 69. *Sched.* (A.) Upon every barrel of liquor which shall be made in *Great Britain* for sale, by infusion, fermentation, or otherwise, from fruit or sugar, or fruit and sugar mixed with any other ingredients, commonly called *sweets* or *made wines*, and so in proportion for a greater or less quantity, shall be paid by the maker a certain duty as therein mentioned.

Duty on sweets.

And by (a) 43 G. 3. c. 81. a further duty is imposed.

By the 43 G. 3. c. 69. *Sched.* (A.) Every retailer of sweets or *British* made wines, shall take out a licence from the officers of excise, for which he shall pay 2*l.* 4*s.* Which licence shall continue in force until and upon the 10th day of *October* next, ensuing the granting thereof and no longer : Provided nevertheless, that where such licence shall be first granted between the 5th of *April* and the 10th of *October* in any year, there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such licence shall be granted. 30 G. 3. c. 38. *f.* 6, 7, 8.

License for retailing.

Every person who shall retail any *British* made wines or sweets without such licence, shall forfeit 50*l.* *f.* 9.

Penalty.

And the same shall be renewed annually ten days at least before the expiration of the former licence, on the like penalty. *Id.*

To be renewed annually.

But no licence shall be granted by virtue of this act to any other than such persons, only as might have licences before the passing thereof. *f.* 14.

Who only to be licensed.

No person, by virtue of any licence from the officers of excise for the sale of *British* made wines or sweets, shall sell the same by retail to be drank in his own house, or place thereto adjoining or belonging ; except a licence shall have been granted to him by the justices or other officers to sell ale, beer, and other liquors in the same house. And the justices and all other officers shall have the same jurisdiction, power, and authority over such retailers of *British* made wines or sweets, as they now have over alehouse-keepers. 28 G. 3. c. 37. *f.* 32. 32 G. 3. c. 59. *f.* 9.

(a) This act to continue till twelve months after the ratification of peace. *f.* 20.

If any person shall sell by retail to be drank as aforesaid, any such *British* made wines or sweets, without having such ale licences as aforesaid, he shall forfeit the like penalties as persons selling ale without licence are subject to by 5 G. 3. c. 46. The same to be recovered and applied, as by that, or any other act relating thereto is directed. *Id.*

Licensed persons dying or removing.

On the death or removal of any such licensed person, commissioners of excise, and the officers of excise may authorize the executors or administrators wife or child of such deceased person, or the assigns of such person so removing, to carry on such trade the remainder of the term for which such licence was granted. 30 G. 3. c. 38. s. 10.

Persons in partnership.

Persons in partnership need not take out more than one licence for one house or place. But such licence shall not extend to any other house or place than such as shall be entered. *Id.*

House or place to be entered.

But no licence shall authorize any person to sell *British* made wines or sweets in any other than such house, shop, or place in which he shall retail the same at the time of granting such licence, and an entry thereof in writing shall be made at the excise office in the name of such person at the time of granting such licence. *Id.*

Who shall be deemed a retailer.

And every person who shall sell or expose to sale any *British* made wines or sweets, in the quantity of 25 gallons or under, shall be deemed a retailer within the meaning of this act. s. 15.

Certain words to be put up.

And by 26 G. 3. c. 74. s. 7. Every such licensed retailer shall cause the words *Dealer in British Wine*, to be written or painted in legible characters, either on a sign hung out or on some conspicuous place in the front of his house, or shop, on pain of forfeiting 10l. s. 7.

Notice to be given.

Every maker of *sweets* for sale shall first give notice to the excise officers of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets, or made wines; on pain of 20l. 10 G. 2. c. 17. s. 4.

Concealing sweets.

And if any maker of *sweets* for sale shall conceal any sweets from the view of the gauger, he shall for every barrel forfeit 40s. 7 & 8 W. c. 30. s. 16.

Permit for removal after duty paid.

If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10s. a gallon, and also the liquor and casks. 6 G. c. 21. s. 22.

All penalties and forfeitures are to be sued for, recovered, Penalties.
and mitigated as by the laws of excise (a), or in the courts
at *Westminster*; and to go half to the king and half to him
who shall sue. 24 G. 3. c. 41. f. 11. 30 G. 3. c. 38. f. 16.
43 G. 3. c. 69. f. 4.

Sect. V. (19.) *Tobacco and Snuff.*

[1 G. ft. 2. c. 46. f. 1. 3. 4. 7. — 5 G. c. 11. f. 22. — 8 G.
c. 18. f. 16. — 12 G. c. 28. f. 13. — 5 G. 3. c. 43. f. 4.
6. — 29 G. 3. c. 68. — 30 G. 3. c. 40. — f. 8 — 10. 23.
25. 26. 28 — 31. — 43 G. 3. c. 68. f. 29. 44. — c. 69. f. 3.
4. — c. 134. f. 5. — 45 G. 3. c. 57. f. 2, 3. — 47 G. 3. ft. 1.
c. 25. f. 1. 2. — 49 G. 3. c. 25. — c. 98. — 52 G. 3. c. 159.]

N. B. The act of 29 G. 3. c. 68. regulating the importa-
tion, exportation, and manufacture of tobacco and snuff,
being of great length, it is thought sufficient in this place to
give a short account thereof only; and also of the act of
30 G. 3. c. 40. made to explain and amend the same; and
for further information to those whom it may materially
concern, to refer them to the acts themselves.]

By which act of 29 G. 3. c. 68. f. 1, 2. 171., the 20 G. 2.
c. 13. — 24 G. 2. c. 41. — 23 G. 3. c. 11. — 25 G. 3. c. 81. —
and 26 G. 3. c. 52. are repealed. And by 49 G. 3. c. 98.
(*Customs*) and c. 69. (*Excise*) all duties under the respective
departments are repealed, and other duties are granted in
lieu thereof.

N. B. Tobacco and snuff are also subject to annual duties
by the act for continuing the duties on pensions, offices,
&c.

And certain drawbacks are allowed upon the exportation
thereof.

Which duties are to be under the management of the
commissioners of the customs and excise. 43 G. 3. c. 68.
f. 44. and c. 69. f. 3.

No tobacco shall be imported but from *America*, on for- Importation,
feiture thereof, with the vessel and her contents; except
from *Spain*, *Portugal*, and *Ireland*, from which places it may
be imported, under certain regulations. 29 G. 3. c. 68. f. 5. 6.
But tobacco of the territories of *Russia* or *Turkey*, may
be imported from thence in *British* built ships, and ware-
housed, and may be exported or entered for home consump-
tion on payment of the like duties as tobacco of the United
States of *America*; and on its being manufactured in *Great*

(a) For which see *ante*, Sect. III.

Britain, and exported shall be entitled to the drawbacks.
43 G. 3. c. 68. f. 29.

By the 45 G. 3. c. 57. f. 2. Tobacco, the production of the *West Indies*, or the continent of *America*, belonging to any foreign *European* State, may be imported into certain ports (in the 1st sect. mentioned), and exported to any port of the United Kingdom, subject to the rules in this act mentioned (for which see the act).

And by f. 3. Such tobacco shall pay the same duties as that which is the growth of the *British West Indies*, or of the United States of *America*.

And by the 49 G. 3. c. 25. Unmanufactured tobacco may be imported from any place in *British* vessels navigated according to law, or in foreign ships navigated in any manner whatever belonging to states in amity with *Great Britain*.

And by f. 2. Such tobacco shall be liable to the same regulations as tobacco from the *British* plantations.]

But no tobacco or snuff shall be imported in any vessel of less burthen than 120 tons; nor any tobacco-stalks, tobacco-stalk flour, or snuff work, in any vessel whatever; nor any tobacco or snuff in any hoghead, cask, or other package less than 45 c. lb. on the like penalty; except loose tobacco for the crew, or passengers, not exceeding 5 lb. for each person; nor shall the vessel be forfeited, if proof be made from the smallness of the quantity that such tobacco or snuff was on board without the knowledge of the owner or master, and without any want of reasonable care on their part. 29 G. 3. c. 68. f. 7, 8, 9, 10, 11.: And in each of the above cases, the tobacco and snuff together with the packages, and also the ship, vessel, &c. in which imported, may be seized by the officers of customs or excise.

By 47 G. 3. f. 1. c. 25. f. 1. The preceding restriction is repealed as to the packing and dividing tobacco within the outer hoghead, cask, chest, or case.

And by f. 2. The outer hoghead, &c. must contain 45 c. lbs. net at the least of tobacco.

And no tobacco or snuff shall be imported except at *London*, *Bristol*, *Liverpool*, *Lancaster*, *Corves*, *Falmouth*, *Whitehaven*, and *Hull*; [and by 31 G. 3. c. 47. f. 3. *Newcastle upon Tyne*,] on the like forfeiture. f. 14.

Manufacturers
to be licensed.

Every *manufacturer* of tobacco or snuff shall take out a licence from the officers of excise, for which he shall pay, if the quantity of tobacco and snuff work weighed by him for manufacture within the year ending the 10th of *October*, previous to his taking out such licence, did not exceed

20,000 lb. £. 2 0 0
If

If above 20,000 and did not exceed	30,000lb.	£3	0	0
Ditto	30,000	-	-	-
Ditto	40,000	-	-	-
Ditto	50,000	-	-	-
Ditto	60,000	-	-	-
Ditto	70,000	-	-	-
Ditto	80,000	-	-	-
Ditto	90,000	-	-	-
Ditto	100,000	-	-	-
Ditto	120,000	-	-	-
Ditto	150,000	-	-	-
Ditto	150,000	-	-	-
		£.	s.	d.

Every person who shall first become a manufacturer of tobacco or snuff, for every such licence 2l., and within 10 days after the 10th of *October* next after taking out such licence, such further additional sum, as with the said 2l. shall amount to the duty herein before directed to be paid, according to the quantity of tobacco and snuff work weighed for manufacture within the preceding year

2 0 0
and a surcharge.

And every dealer in tobacco and snuff shall take out a licence in like manner, for which he shall pay, within the liberties of the chief office in *London*, 5s. elsewhere 2s. 6d.

43 G. 3. c. 69. *Sched.* (A.)

But persons licensed as manufacturers, who shall not at any time sell tobacco in a less quantity than 4lb: nor snuff in less than 2lb. need not be licensed as dealers. 29 G. 3. c. 68. *f.* 73.

Every person who shall manufacture or deal in tobacco or snuff without taking out such licence; or shall not renew the same ten days at least before the end of the year, shall forfeit, if a manufacturer, 200l., and if a dealer 50l. *f.* 72.

But no person shall be liable to the said penalty of 50l. for selling unmanufactured tobacco or snuff whilst remaining in the king's warehouse. *f.* 75.

But persons in partnership need not take out more than one licence for one house. *f.* 74.

Every person who shall manufacture tobacco, tobacco-stalks, or returns of tobacco, or manufacture, or flatten any tobacco-stalks, or cut the same into *Spanish*, shall be deemed a manufacturer of tobacco. And every person who shall grind or manufacture any tobacco-stalk flour, snuff work, or snuff, shall be deemed a manufacturer of snuff. And every person who shall sell any tobacco, tobacco-stalks, or returns of tobacco, or stalks flattened or cut into *Spanish*, shall be deemed a dealer in tobacco. And every person who shall sell

Entry to be made.

any tobacco-stalk flour, snuff work, or snuff, shall be deemed a dealer in snuff, within the meaning of this act. *f.* 155.

Every manufacturer and dealer shall make entry in writing of his house or place intended to be made use of for manufacturing, keeping, or selling tobacco, tobacco-stalks, *Spanish*, tobacco-stalks for tobacco-stalk flour, snuff work, tobacco-stalk flour, or snuff, three days before he shall begin; on pain of forfeiting 200*l.*, and also the tobacco, &c. &c. there found, together with the casks and packages which may be seized by the officers of the customs or excise. *f.* 59.

Where entry shall be made of any house or place for manufacturing, keeping, or selling tobacco, &c. &c., no other entry shall be made by any other person (except partners) of any place under the same roof, or with the same house or tenement; on the like penalty. *f.* 60.

But the person making the same, within the limits of the head office, must occupy a tenement of 10*l.* a year, and pay to the parish-rates; elsewhere, he must pay to the church and poor. *f.* 61.

Every such manufacturer shall three days before he begins to manufacture, make entry in writing at the excise office of all mills, presses, engines, rollers, stoves, mullers, or spinning-wheels, intended to be used by him about the manufacturing of tobacco &c. &c. &c.; on pain of forfeiting 50*l.* for every such utensil not entered. *f.* 69.

Certain words to be put up.

Every such manufacturer and dealer shall cause to be painted or written in large legible characters over the outer door, or in the front, or on some conspicuous part of each such house or place, the words *Manufacturer of, and Dealer in, Tobacco and Snuff*, or *Tobacco or Snuff*, or *Manufacturer of, or Dealer in Tobacco and Snuff*, or *Tobacco or Snuff*, (as the case may be); on the penalty of 50*l.* *f.* 62.

If any person, who has not made such entry as aforesaid, shall paint or write up the said words, in such manner and place, he shall forfeit 100*l.* *f.* 63.

Where only manufactories may be set up.

And by 30 G. 3. c. 40. No person shall set up or begin any manufactory of tobacco, &c. &c. within five miles of the sea coast, (except in the ports and places aforesaid where tobacco may be imported, or places within three miles thereof; and also except in cities, or the suburbs thereof, and market towns;) and no entry thereof shall be of any avail. *f.* 8.

May be manufactured at entered mills, by unlicensed persons.

But tobacco and snuff may be manufactured by any unlicensed *Spanish* cutter, or snuff miller at any entered mill, on account of any other licensed manufacturer, provided the same be legally permitted from such other manufacturer, and for the sole purpose of manufacturing or grinding. 29 G. 3. c. 68. *f.* 76.

Every

Every manufacturer shall give notice in writing to the officers (if in *London* six, in cities and market towns 12, and elsewhere 24 hours) before he shall begin to strip, spin, or press any tobacco for cutting; or make any tobacco into carrots, or flatten any tobacco-stalks for *Spanish*; and shall express therein the weight of each article, and the time he intends to begin; and the officer shall attend accordingly, and he shall begin within one hour of the time so mentioned, and shall proceed without delay; and shall afterwards deliver a declaration in writing to such officer, of the quantity intended to be used for each sort of tobacco; on the penalty of 20*l.* and such notice being void. *f.* 77. 95. — 30 *G.* 3. *c.* 40. *f.* 30.

Notice to be given of beginning to work.

Provided, no such manufacturer shall be so liable, if such tobacco shall afterwards appear to be unfit to be so pressed, spun, or made into carrots; specified in such declaration; and notice shall be given in 48 hours after delivery of the declaration; and in case the manufacturer within that time, in like manner deliver to such officer a like declaration, specifying into which sort of tobacco it is to be manufactured, and shall in like manner proceed to press for cutting, to spin, to make into carrots, and the like, if it be to be made into snuff. 29 *G.* 3. *c.* 68. *f.* 78, 79.

Tobacco not fit for the purpose intended.

Such manufacturer, as soon as the manufacturing is finished, shall deliver to the officer a declaration of the weight of the different sorts of tobacco so manufactured, and the number of the rolls or carrots made, and the weight thereof, and of the tobacco-stalks and returns arising from the operation; and shall keep each sort separate for 24 hours, or until an account be taken; on the penalty of 50*l.* *Id.* *f.* 80, 81, 82.

Weights, &c. of each sort to be declared after manufacturing.

If any manufacturer shall make, or have in his possession, any roll or carrot-tobacco for exportation, with any tobacco-stalks therein, the same shall be forfeited, and may be seized, and he shall also forfeit 50*l.* *Id.* *f.* 83.

Tobacco for exportation to have no stalks in.

Every person who shall cut any walnut-tree leaves, hop-leaves, sycamore-leaves, or other leaves, herbs, or plants, in imitation of tobacco (not being tobacco-leaves or plants); or shall colour, stain, dye, or cure the same so as to resemble tobacco; or shall mix any such leaves, herbs, or plants with tobacco; or shall sell or expose to sale or have in his possession any such leaves, herbs, or plants so cut, coloured, stained, dyed, or cured, or mixed, shall forfeit the same with the casks and package, which may be seized; and also 200*l.* *Id.* *f.* 84. The same penalty attaches to the causing and procuring.

No person to cut leaves, &c. in imitation of tobacco.

Provided, that nothing herein shall extend to prohibit any such manufacturer from dying tobacco, or for having such

Manufacturers may keep and use dye.

dye in his possession for that purpose. *Id.* s. 85. 30 G. 3. c. 40. s. 23.

Snuff manufacturers to provide casks, &c.

Every manufacturer of snuff shall provide proper moveable casks for preparing, laying down, or putting into bins, snuff work and tobacco-stalks for flour; and shall place them so as that the officer may conveniently examine and weigh the same, at all times; and shall mark every such cask with a progressive number, and the tare and weight thereof; and shall not lay down any snuff work in any cask not so marked; nor put the same in any bin; on the penalty of 50l. 29 G. 3. c. 68. s. 86.

And to give notice when they begin to work.

Such manufacturer of snuff shall, before he begins to liquor, damp, strip, press, or cut any tobacco or stalks, &c. or to lay down any snuff work, or tobacco-stalks for tobacco-stalk flour, give like notice as aforesaid to the officer, and shall in such notice declare the weights thereof respectively, and the number of each particular cask or bin in which the same is intended to be laid down; and such officer shall attend accordingly; and such person shall begin within one hour of the time so mentioned, and shall without delay proceed therein, until the whole is weighed; and shall then deliver an account in writing of the quantity intended for each sort of snuff or flour; and when put into casks he shall give a like notice, and in the presence of the officer shall affix to each cask a ticket specifying the number of such cask, and the weight of the snuff work, &c. therein, and the time when laid down, and what sort of snuff it is intended for; which ticket shall be signed both by such manufacturer or his servant and the officer; and when the same is intended to be taken out to be ground, like notice shall be given, and the same shall be weighed out in the presence of the officer. And no such manufacturer shall mix snuff work or tobacco-stalks for flour of one making with another; on pain of forfeiting for every offence aforesaid 50l. *Id.* s. 87.

Snuff work, &c. not fit for the purpose intended.

Provided always, that whilst such snuff work shall be in cask or bin, and shall afterwards appear to be unfit for the purposes specified in such declaration or be intended to be manufactured contrary thereto, notice thereof in writing shall be given to the officer within 48 hours after the delivery of such declaration, and a fresh declaration shall be given specifying the sort it is intended for, and such manufacturer shall proceed therein in manner as aforesaid. *Id.* s. 88. 30 G. 3. c. 40. s. 9, 10.

Snuff of one sort may be made into another sort.

Scotch snuff and tobacco-stalk flour may be manufactured into brown *Scotch* snuff, and tobacco-stalk flour into rappee snuff, subject to the regulations aforesaid. And on taking stock, certain credits shall be allowed, (as set forth in the act;) and if on such taking stock any excess be found, the

same shall be forfeited, as brought without an authentic permit, and may be seized. 30 G. 3. c. 40. f. 19, 20, 21.

And to snuff work in operation, tobacco, tobacco-stalks, or flour, or returns of tobacco, may be added once while in cask or bin, or once immediately before the grinding, or once at or during each operation, on giving to the officer, previous to such increase being made a like notice specifying the cask or bin, and the number thereof, and the time when first laid down, and the time when any increase was made, and the weights of the tobacco, &c. intended to be added. *Id.* f. 11, 12.

To snuff work in operation, tobacco, &c. may be added.

The whole of any parcel of snuff work in cure, may be mixed with the whole of any other parcel in cure, although laid down at different times, if the same be mixed in the presence of an officer, to whom notice is to be given as aforesaid. *Id.* f. 13.

Snuff work in cure may be mixed.

If any manufacturer has occasion to supply his customers with manufactured tobacco or snuff from any parcel in operation before the whole is finished, he may, in the presence of an officer, take for the purpose aforesaid any manufactured tobacco or snuff not less than 200lb. from any parcel then in operation. But if taken without conforming to the regulations specified in the act; he shall forfeit 50l. *Id.* f. 14.

200lb. or above may be taken from tobacco or snuff in operation.

And every manufacturer of snuff shall diligently manufacture such snuff work and tobacco-stalks for flour when taken out of such cask, into snuff, according to the notice given; and when the same is finished he shall deliver to the officer a declaration in writing of the weight of each sort so made, and shall keep the same separate for 24 hours, or until the officer shall have taken an account thereof; on the penalty of 50l. 29 G. 3. c. 68. f. 89.

Snuff work when finished to be kept separate till surveyed.

But the same shall not extend to *Scotch* snuff returned directly from the mill; provided at the time the same is taken from the room where deposited a declaration in writing be delivered to the officer, specifying the weight thereof, and the time when the same was laid down in snuff work. *Id.* f. 90.

Except *Scotch* snuff returned from the mill.

Provided always, that every manufacturer may provide a store-room for keeping dried *Scotch* snuff, with good and sufficient fastenings to be approved of by the surveyors and supervisors of the district; but the same shall have but one door or entrance, which shall be locked up, sealed, and secured by the officer when any *Scotch* snuff shall be therein; wherein may be deposited *Scotch* snuff returned directly from the mill for 6 months, without being taken as part of his stock. And when the same is intended to be taken out of such room, notice shall be given to the survey-officer, in six hours if within the limits of the head

Store rooms for dried *Scotch* snuff.

office of excise, and 12 hours if elsewhere in any city or its suburbs, and 24 hours if elsewhere, who shall attend and open such room, and such snuff shall be taken out in his presence; and shall be kept separate one making from another; on the penalty of 50*l*. And if any such manufacturer shall open such store-room, except in the presence of an officer, he shall forfeit 200*l*. *Id.* *f.* 91, 92.

Adulterating tobacco or snuff.

Every person who shall cut or cause to be cut any walnut, hop, sycamore, or any other leaves, herbs, plants, or materials (not being tobacco leaves or plants); or shall colour or cure, or cause any such to make the same resemble tobacco for sale; or shall sell or cause to be sold, or agree or offer to sell, knowingly the same mixed or unmixed with tobacco, as tobacco, shall forfeit 5*s*. a-pound, half to the king (charges of the prosecution first deducted), and half with full costs to him who shall sue. 1 *G.* *f.* 2. *c.* 46. *f.* 1.

Every person who shall make, mix, or colour, or cause, &c. any snuff with oaker, umber, or other colouring, except water tinged with *Venetian* red only; or shall mix with snuff any fustick or yellow ebony, touchwood, or other wood, or any dirt, sand, or small tobacco sifted from tobacco, or knowingly sell or expose to sale any such, shall forfeit the same, and 3*l*. for every pound weight, half to the king, and half to him that shall sue. 1 *G.* *f.* 2. *c.* 46. *f.* 7. 5 *G.* *c.* 11. *f.* 22.

And all such leaves, herbs, plants, and materials, so sold, contracted for, or knowingly offered for sale, and all engines, utensils, and tools for working the same, may be searched for and seized, by warrant of three commissioners of the treasury or of the customs. 1 *G.* 1. *f.* 2. *c.* 46. *f.* 3.

But no house or warehouse shall be opened to search for or seize the same but at seasonable hours, and not without a special warrant from two justices of the peace. *f.* 4.

And the said materials or engines found and seized within the limits of any port, or within six miles of any port, shall be brought to the next custom-house warehouse; and if at a greater distance from any port, shall be secured by order of two justices at the king's charge, till the cause of such seizure shall be determined at the next, or at farthest, the second quarter sessions after seizure; and the same, after condemnation or recovery by judgment of such sessions, shall be openly burned or destroyed by order of the same, at his majesty's charge. *f.* 4.

All servants and labourers employed in manufacturing or knowingly selling such leaves or materials, shall on conviction before two justices by oath of one witness, be committed to the common gaol or house of correction, to be kept to hard labour (not exceeding) six months. *f.* 5.

If any person shall mix any fustick, or other wood; or any walnut-tree or other leaves, herbs, or plants (other than tobacco); or any earth, clay, or tobacco sand, with any snuff work or snuff; or shall make or colour, or cause, &c. the same with any sort of colouring (water tinged with colour only excepted); he shall forfeit 200l. And if any manufacturer or dealer in snuff shall sell, offer, or expose to sale, or have in his entered premises, any fustick, yellow ebony, touchwood, logwood, red or *Guinea* wood, *Brazil* wood, or *Jamaica* wood, *Nicaragua* wood, or *Saunders* wood; or any walnut-tree, hop, or sycamore leaves; or shall have in his possession any of the aforesaid articles; or any other wood, leaves, herbs, plants, earth, clay, or tobacco sand, mixed with any snuff work or snuff; or such snuff work or snuff coloured (except as aforesaid); he shall forfeit 50l. and the same shall be forfeited, and may be seized. 29 G. 3. c. 68. s. 93.

Persons mixing fustick, &c. with snuff work, or having the same in their possession.

Any manufacturer of *British* rappee, *Scotch* or brown *Scotch* snuff completely finished, and of which an account has been taken by the officer, may liquor or damp the same before mixing with snuff of a different making, so as the weight exceed not the legal credit: And if such manufacturer shall intend to liquor or damp snuff for which the legal credit has not been received, he shall give notice thereof to the officer, specifying the kind, weight, and quantity (and other particulars in the act stated). But no snuff shall be liquored in less parcels than 200lb. nor one making in more than four different parcels. 30 G. 3. c. 40. s. 15, 16, 17.

Snuff completely finished, may be liquored.

Snuff for which such allowance shall have been made shall be kept separate from all other snuff, and shall be shewn to the officer on demand; on the penalty of 20l. *Id.* s. 18.

Every manufacturer and dealer who shall mix *Spanish* with short-cut tobacco, or any tobacco-stalk flour with *British* or foreign snuff, or any *British* rappee, *Scotch*, or brown *Scotch* snuff, the one with any other of them, or with any kind of foreign snuff, shall every day enter into a book or paper the quantity sold, sent out, or consumed of 2lb. or upwards, and the gross weight thereof, and the gross weight of the tobacco-stalk flour, and the time when mixed; on pain of forfeiting 50l. 29 G. 3. c. 68. s. 94.

An account to be kept of mixed tobacco or snuff sold or sent out.

When any officer shall discover that the manufacturing of tobacco or snuff is carried on in any unentered place, and at the same time shall discover therein any person knowingly assisting, or any ways concerned in carrying on the same, every such person shall forfeit 30l. over and above all penalties and forfeitures that the proprietor thereof shall be liable

Manufacturing tobacco or snuff in unentered places.

liable to; and such officer, or his assistant, may stop and arrest such person, and convey him before a justice, who, on his confession or the oath of one witness, may convict such person so discovered, who shall immediately pay the said penalty to such officer or person who brought him; and if not so paid, such justice shall commit him to the house of correction to hard labour for six months from the day of conviction, or until the said penalty be paid. And for a second offence, he shall forfeit 60*l.*, which if not paid in manner aforesaid, he shall be committed in like manner for one year, or until such penalty be paid. *Id.* *f.* 96.

Officers may enter and take stock.

The officers of excise, (at any time between five in the morning and 11 in the evening, with or without a constable, or other officer of the peace, and between 11 in the evening and five in the morning with a constable or other peace-officer), may enter into any house or place belonging to or made use of by any manufacturer or dealer, and take an account of the stock found therein; and shall give credit (as particularly set forth in the act). And if at any time any excess in stock shall be found, the same shall be deemed and taken to be brought in without notice and without permit. *f.* 97, 98.

Scales and weights to be provided.

Every manufacturer and dealer shall keep sufficient scales and weights for the use of the officers, on the penalty of 100*l.* And if any such person shall, in weighing, use any art or device to prevent such officer from taking a true weight of such tobacco, &c., he shall forfeit 200*l.* together with such scales and weights, which may be seized. *f.* 99.

And to assist the officers.

And every such manufacturer and dealer shall, with a sufficient number of his servants, assist such officer in taking such account of stock; on pain of forfeiting 50*l.* *f.* 100.

Not to be weighed whilst in operation.

But no officer shall weigh any tobacco-stalks, or snuff work, whilst actually in the operation of manufacture; except snuff work intended to be sent out or received by permit. *f.* 101.

To be kept separate.

And unmanufactured tobacco, tobacco in the state of operation, and manufactured tobacco, shall be kept separate from each other; on the penalty of 50*l.* *f.* 102.

Officers may take samples.

The officers shall be permitted to take samples of tobacco or snuff, &c. in the possession of any manufacturer or dealer, paying for the same (if demanded) the value or usual price; on the penalty of 100*l.* upon refusal. *f.* 103.

An account to be kept of the quantity daily sold.

Every manufacturer and dealer shall, in a book or paper, to be furnished by the officers, on demand made, keep an account of all tobacco, &c. and snuffs which he shall have sold, sent out, or consumed the preceding day, in quantities of 4*lb.* or upwards; of tobacco, &c., and 2*lb.* or upwards of snuffs; and also another book or paper in like manner, if under

under 4lb. of tobacco, &c., or 2lb. of snuffs: But no such person shall have more than one such book or paper of each sort at the same time, which is to be returned to the officer, if in *London*, or any city or market town every six weeks, elsewhere, every six months, or when the same is filled up, or demanded; and shall be verified on oath. And such books and papers shall lie open for the inspection of the officer, and shall be made up at his request; on the penalty of 100*l.* for every such offence. *f.* 104, 105.

If any officer shall discover any increase in such stock not legally accounted for, the same shall be deemed and taken to be made by a commodity for which no duty has been paid, and privately brought in without permit; and such increase shall be forfeited, and may be seized; and the person, in whose stock such increase shall be found, shall also forfeit 20*l.* *f.* 106.

Unfair increase
in stock to be
forfeited.

But *Scotch* snuff in the custody of a manufacturer or dealer, not having gained more than 5*lb.* in the 100*lb.* by the moisture of the air, shall be deemed a fair commodity, and such manufacturer shall have credit for the same in stock, and may remove the same by permit. And the manufacturer and dealer shall keep such snuff separate from all other snuff, and shewn to the officer upon demand; on the penalty of 20*l.* *f.* 107, 108.

Scotch snuff not
having gained
more than 5*lb.*
in 100*lb.*

If any manufacturer shall remove any tobacco or snuff out of his entered house or place before the same has been weighed and taken an account of by the officer, or shall hide or conceal the same from the view of such officer; he shall forfeit 50*l.* *f.* 109.

Tobacco or snuff
not to be re-
moved before
weighing.

And no tobacco (except returns) of 4*lb.* and upwards, nor snuff of 2*lb.* and upwards, nor any tobacco-stalks, *Spanish*, returns of tobacco, tobacco-stalks for flour, snuff work or tobacco-stalk flour exceeding 200*lb.*, shall be removed by land or water without a permit, on pain of forfeiting the same, with the casks or other packages, and also the horses, cattle, boats, barges, and carriages used in conveying the same, which may be seized by any officers of customs or excise. *f.* 110.

Not without a
permit.

The officers of excise on request shall grant permits, wherein shall be limited the time for such removal; and distinguishing the weight, kind, according to the denominations in the request note, and the name of the person to whom, and place to which, to be sent; and whether by land or water, and by what mode of conveyance; and if the goods permitted shall not be delivered and received within the time so limited, the same shall be deemed and taken to be removed without permit. *f.* 111, 112.

Officers to grant
permits.

But

Exceptions.

But no permit shall be granted or be valid for the removal of any snuff work from one part of the kingdom to another, except from the entered premises of a manufacturer of snuff where the same was laid down, to the mill for the purpose of grinding; on pain of forfeiture thereof, together with the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized. 30 G. 3. c. 40. s. 29.

Request notes to be given."

And no such permit shall be granted or be valid, unless a request note be sent from such manufacturer or dealer containing the particulars specified in the act, and such permit correspond with the request note; and if for removing unmanufactured tobacco (other than samples) except the same be in the original package, and be removed according to the regulations specified in the act (for which see this section in the act itself). And all tobacco, &c. removed contrary thereto shall be forfeited, together with the casks and package, and the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized. 29 G. 3. c. 68. s. 113, 114.

Permits for removing unmanufactured tobacco.

Permit for removing to and from mills.

Provided always, that permits may be granted for the removal of any unmanufactured tobacco in any quantity not less than 200lb. in any package whatsoever from the entered premises of any manufacturer to any mill to be manufactured, and back to such entered premises. 30 G. 3. c. 40. s. 25. 28.

And every manufacturer of tobacco or snuff may manufacture their tobacco, tobacco-stalks, snuff work, and returns of tobacco, at any entered mill, and may remove the same by permit to and from such mill. *Id.* s. 27.

Tobacco may be finished or snuff dried at mills.

Provided, that nothing herein shall extend to prevent any manufacturer from stoving or finishing tobacco, or drying snuff work at any cutting mill, or snuff mill, provided the officer be allowed to weigh and take an account thereof after such stoving, finishing, or drying. 29 G. 3. c. 68. s. 115.

Permits when not used to be returned.

Where any permit shall be granted for the removal of any tobacco, &c. or snuff, and the same shall not be removed agreeably thereto, such permit shall be returned before the expiration of the time limited for such removal; on forfeiture of treble the value of such goods. And where such permit shall not be so returned as aforesaid, and on taking stock a decrease does not appear to answer the contents of such permit, a like quantity to that permitted to be removed shall be forfeited, and may be seized. *Id.* s. 116.

Manufacturer not licensed as a dealer.

No manufacturer, unless also licensed as a dealer, shall have a permit for or shall sell or send out any manufactured tobacco, *Spanisb*, or returns of tobacco, in a less quantity than 4lb. nor snuff than 2lb.; on the penalty of 20l. s. 117.

No tobacco, &c. or snuff shall be brought into any house or place made use of by a manufacturer or dealer without a permit, and also notice thereof shall be first given to the officer; on pain of forfeiting the same, together with the casks and package, which may be seized, and such manufacturer or dealer shall also forfeit treble the value thereof, to be estimated according to the highest price. *f. 118.*

No tobacco, &c. to be taken in without a permit.

No tobacco, &c. or snuff shall be removed from any place without the limits of the bills of mortality or excise office in London, to any place within those limits; nor from any place without the limits of the ports herein before enumerated to any place within, or within two miles of those limits; on forfeiture thereof, with the casks and packages, and also the vessels and boats, and the horses, cattle, and carriages employed in removing the same, which may be seized. *f. 119.*

Removing to London, or the parts aforesaid.

Provided, that no *Spanish* manufactured by any *Spanish*-cutter from tobacco-stalks, received by him accompanied with a legal permit from any other manufacturer of tobacco for the purpose only of manufacturing the same into *Spanish*, for or on account of such other manufacturer; *nor* any cut tobacco, cut by any cutter from tobacco, &c. (as before); *nor* any tobacco-stalk flour ground by any snuff miller from tobacco-stalks received, &c. (as before); *nor* any snuff ground by any snuff miller from any snuff work received, &c. as (before); *nor* any hogthead, &c. or package containing any such *Spanish*, &c. or the vessel, boat, &c. &c. employed in removing the same, shall be forfeited by reason of the return of any such *Spanish*, &c. by any such *Spanish* cutter or snuff miller, from his entered mill not within the limits of the weekly bills, or of the chief office of excise, or from any place not within the limits of the said first mentioned ports, to the entered premises whence received, situate as aforesaid, or within 2 miles of the said ports, provided the said *Spanish*, &c. be accompanied with a permit, according to this act. *f. 121.*

Provided also, that any manufacturer may send for sale, by permit, snuff manufactured by him, from any part of the kingdom to any other part. *f. 122.*

By 30 G. 3. c. 40. Tobacco-stalks stripped from the leaf may be removed by permit from any entered premises out of the limits of the bills of mortality to any place within those limits, subject to the regulations in the aforesaid act, and his act specified. *f. 26.*

Any manufacturer or dealer who hath received into his stock by permit any tobacco or snuff, may return the same within 48 hours to the person from whom he received it under certain regulations. (*See the act.*) But if found returned, or returning without permit, or shall not be the same

Tobacco or snuff may be returned with a permit.

same identical tobacco or snuff which had been received without any addition to, subtraction from, or alteration; the same shall be forfeited, with the casks and package, which may be seized by officers of customs or excise, and the person who shall return the same shall forfeit 50*l.* 29*s.* 3*d.* 68. *f.* 122.

Not to be removed but during certain hours, except by common carriers.

If any tobacco of 4*lb.* wt. or upwards, or snuff of 2*lb.* or upwards, or any tobacco-stalks, &c. shall be found removing, unless between 7 in the morning and 5 in the evening from 29*th* *Sept.* to 25*th* *March*, and between 5 in the morning and 7 in the evening from 25*th* *March* to 29*th* *Sept.* (except by a common carrier or vessel usually travelling or navigating out of these hours,) the same shall be forfeited, with the casks and package, and the cattle, carriages, and vessels made use of in conveying the same, which may be seized by any officer of customs or excise whether the same be accompanied with a permit or not. *f.* 123.

Offering tobacco &c. to sale without a permit, or hawkers with one.

If any person whatsoever without a permit, or hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading either on foot, or with any horse or other cattle, or otherwise with one, shall offer any tobacco, &c. &c. to sale, he shall forfeit the same, together with the package and also 20*l.* And the person to whom it shall be so offered to sale, may seize the same, and carry it to the next warehouse belonging to the customs or excise, and shall bring the person so offering it to sale before a justice, who shall commit him to prison, that he may be prosecuted for such penalty; and the person so seizing the same, shall be entitled to the same rewards as the officers of the customs or excise; and in case such person shall desire it, the commissioners may cause 3*d.* for every pound of tobacco, &c. so seized to be advanced to him, till the same can be disposed of, upon a certificate under the hand and seal of such justice of such offender being committed to prison; and after sale, the money so advanced shall be replaced out of the produce of such sale. *f.* 124.

Forging permits.

If any person shall counterfeit or forge any permit, he shall forfeit 50*l.* *f.* 125.

Obstructing officers.

If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this or any other act; or shall rescue any such goods which have been seized; or any vessel, horses, cattle, or carriages which have been forfeited, and for which no particular penalty is provided; he shall forfeit 200*l.* for each offence. *f.* 149.

Offering bribes.

If any person shall give or offer any bribe, recompence, or reward to any officer to prevent him doing his duty, whether the same be accepted or not, he shall forfeit 500*l.* *f.* 150.

No tobacco, &c. or snuff shall be landed, without first making entry thereof with the officers of the customs, on forfeiture thereof, with the casks and package. *f. 152.*

Entry to be made before landing.

If any officer of excise shall have cause to suspect that any tobacco, &c. or snuff, which shall have been imported contrary to this act, or forfeited by this or any other act, is deposited, lodged, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office, upon oath made before two commissioners, elsewhere upon oath made before one justice, setting forth the ground of his suspicion, such commissioners or justice may by warrant authorize such officer by day or night, but if in the night in the presence of a constable or other peace officer, to enter into such suspected place, and to seize and carry away all such tobacco, &c. or snuff which shall be there found, together with the casks and package containing the same. And if any person shall obstruct or hinder any such officer so authorized, or person assisting him in the execution of such warrant, he shall forfeit 100*l.* *f. 153.*

Officers may search suspected places.

Tobacco and snuff, taken as prize, are subjected to the regulations of this act, by 43 G. 3. c. 134. *f. 5.*

No manufacturer or dealer in tobacco or snuff, or person anywise interested or concerned therein, shall act as a magistrate in the execution of any act relating to tobacco or snuff; and all acts done by such person shall be utterly null and void. *f. 154.*

No manufacturer or dealer to act as a magistrate.

The powers of 12 G. 2. c. 24. and of any other law respecting the excise (except hereby altered) are to be exercised in levying the excise duties thereby imposed. *f. 170.* 43 G. 3. c. 68, 69.

Powers of former acts to extend to this act.

[And there are several regulations made and drawbacks allowed on the *exportation* of tobacco, &c., for which see the respective acts.]

If any tobacco-stalks or stems stript from the leaf shall be imported, the same shall be forfeited and burned; and the officer seizing the same shall be allowed 1*d.* a pound; and every person who shall be assisting or otherwise concerned in unshipping the same, or to whose hands they shall knowingly come after unshipping, shall forfeit treble value, together with the vessels, bags, casks, or other things wherein the same are contained, and the horses, cattle, carts, and other carriages made use of in removing the same; half to the king, and half to such officer of the customs who shall seize, inform, or sue for the same. 12 G. c. 28. *f. 13.* 5 G. 3. c. 43. *f. 4.* 6. 8 G. c. 18. *f. 16.*

Importing tobacco stalks.

All seizures of vessels or boats of 15 tons or under, and of horses or other cattle and carriages, by virtue of any act relating to the customs, may be prosecuted, heard, and determined

Power of the justices.

terminated before two justices residing near where the seizure was made. 8 G. 3. c. 18. s. 16. 5 G. 3. c. 43. s. 6. 29 G. 3. c. 68. s. 156.

And all penalties and forfeitures in the excise may be sued for, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*, half to the king, and half to him who shall sue (unless otherwise particularly directed). 29 G. 3. c. 68. s. 157. 30 G. 3. c. 40. s. 31. 43 G. 3. c. 69. s. 4.

By the 52 G. 3. c. 159. Tobacco (and also liquors) derelict are subject to the duties of excise.

By 52 G. 3. c. 159. For the better securing the payment of the duties upon such liquors and tobacco respectively, it is enacted, that every person bringing into this kingdom, or finding or discovering on the coasts of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, lagan, or wreck, in respect whereof any duty of customs or excise is by law imposed, shall, within 24 hours next after he shall have so brought, &c. the same, if the same be found on land, or within 24 hours next after the same shall have been landed, if the same be found at sea, give notice thereof to the next custom-house or excise office, or to some neighbouring officer of customs or excise, specifying the place where the same then lie or are deposited; and the proper officers shall forthwith take a particular account of such liquors or tobacco, and shall demand of the person in whose possession they may be, or who shall have found or brought to land the same, the full duties of customs and excise due in respect thereof; and in case the same shall not on such demand be paid, the said officer shall cause such liquors or tobacco to be securely lodged and deposited in a warehouse, to be there kept under his majesty's lock, until the duties payable shall be paid, or until they shall be sold as hereinafter mentioned: And if any person shall bring into this kingdom, or find or discover on the coasts of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, lagan, or wreck, in respect whereof any duty is by law imposed, and shall not give such notice as aforesaid; every such person shall for every such offence forfeit 100l.: And if any person shall remove, open, or alter in quantity or quality, or cause to be removed, &c., or aid or assist in the removing, &c. any such liquors or tobacco, or break, sever, or destroy, or cause to be broken, &c. or aid or assist in the breaking, &c., any of the cases or packages containing any such liquors or tobacco before taken an account of by the

(a) For which see *ante*, Sect. III.

proper officers, and before the said liquors or tobacco shall be by them lodged or deposited as aforesaid, every such person so offending shall for every such offence forfeit 100l.; and all such liquors and tobacco respectively so removed, &c. together with the casks and other packages respectively containing the same, shall be forfeited, and may be seized by any officer: provided always, that if the duties shall not be paid within 18 months next after such lodging as aforesaid, the commissioners of customs or excise may sell and dispose of such liquors or tobacco, or any part thereof, for the satisfying the duties payable, and also the costs, charges, and expences attending the conveying to such warehouse, and of the keeping and sale thereof, rendering the overplus after payment to such person as shall be by law entitled to the same; and if upon such being put up or offered to sale, no person shall bid for the same as much or more money than the duties payable in respect thereof, together with the warehouse rent, costs, charges, and expences taken together would amount to, then the said commissioners may permit the person entitled to the same, to expose or to sell and dispose thereof for exportation only, subject to the usual regulations in such cases, or if such person should refuse so to do, then to sell and dispose of such liquors or tobacco for exportation, or to destroy the same, as such commissioners may deem most expedient: provided also, that nothing herein-before contained shall extend to prevent any such liquors or tobacco as the said commissioners may deem necessary for that purpose being sold duty free, for the payment of the salvage expences incurred in respect thereof. *f. 2.*

The lord of the manor on which such liquors or tobacco shall be found, having by law just claim thereto, or where no such lord of the manor shall exist, then the person or persons bringing into this kingdom, or finding or discovering on the coasts thereof, any such foreign liquor or tobacco, shall be at liberty to retain the same in his own custody or possession for one year and one day, to be computed from such bringing, finding, or discovering thereof, on his entering into bond to his majesty, with two sufficient sureties to be approved of by the proper officer of customs or excise, in treble value for the due payment of the duties in respect thereof at the end and expiration of such year and day, or in default of such payment to restore such liquors and tobacco at the end or expiration of such year and day to the proper officer of the customs or excise in the same state as the same was in at the time of such bringing, &c. *f. 3.*

All fines, &c. imposed by this act, sued for under the order or permission of the commissioners of the customs,

or by any officer of the customs, shall and may be sued for, and disposed of as any offence against the laws of customs may now legally be sued for; and the officer of the customs concerned in any such seizures or prosecutions shall receive such share of the produce arising from the said seizures as they are now by law entitled to upon prosecution of seizures for unlawful importation, and to such share of the produce arising from any such penalty or composition paid for any offence against this act as they are now by any law or regulation entitled to upon prosecution for pecuniary penalties. *f. 5.*

All penalties and forfeitures created, and which shall be prosecuted by order of the commissioners of excise, or by any officer of excise, shall be sued for, recovered, levied, or mitigated, as any may by any law of excise, or by action of debt, &c. respectively; and one moiety shall be to his majesty, and the other to him who shall inform, discover, or sue for the same. *f. 6.*

Sect. V. (20.) *Vinegar and Verjuice.*

[12 C. 2. c. 24. *f. 29—33.* — 7 & 8 W. c. 30. *f. 16, 17, 25.* — 10 & 11 W. c. 21. *f. 11—15.* — 12 G. c. 28. *f. 30.* — 24 G. 3. c. 21. *sess. 2. f. 1, 7, 8.* — 26 G. 3. c. 73. *f. 55, 56.* — 43 G. 3. c. 68. — 49 G. 3. c. 98.]

Vinegar maker
to be licensed.

Every maker of vinegar for sale shall take out a license, for which he shall pay 10l.; and shall renew the same annually ten days at least before the end of the year; on pain of 50l. 43 G. 3. c. 68. *Sched. (A.)* 24 G. 3. c. 41. *sess. 2. f. 1, 7.*

But persons in partnership need only take out one license for one house. *f. 8.*

Importation.

By 43 G. 3. c. 68. For all *vinegar* or *verjuice* imported a certain duty shall be paid per ton (quantity 252 gallons).

Home duty on
vinegar.

By 43 G. 3. c. 69. *Sched. (A.)* for every barrel of *vinegar*, *vinegar beer*, or liquors preparing for *vinegar*, which shall be brewed or made in *Great Britain* for sale, shall be paid by the maker a certain other duty.

Duty on ver-
juice.

And upon every hoghead of *verjuice* which shall be made in *Great Britain* for sale, shall be paid by the maker a certain duty.

[And by 49 G. 3. c. 98. a duty is imposed in lieu of all former duties of customs.]

By 10 & 11 W. c. 21. 34 quarts shall be accounted a gallon of vinegar, according to the standard ale quart. *f. 15.*

Entry to be
made of places
used for making
vinegar.

Every vinegar maker shall make entry with the officer of excise of the house or place where he intends to carry on the trade; and whether he be a maker of vinegar from

malt

malt or corn, or melasses or sugar, or from any and what other materials. 26 G. 3. c. 73. f. 56.

Such officer may at all times by day and night (but if in the night in the presence of a constable or other peace officer) enter into any places used by such persons, and take an account of such liquors therein, and shall make a report thereof in writing to the commissioners, leaving a true copy thereof under his hand, with such maker, if demanded, in writing, under the penalty of 10l. 7 & 8 W. c. 30. f. 25. 12 G. c. 28. f. 30. 12 C. c. 24. f. 33.

Officers may enter and survey.

By 10 & 11 W. c. 21. No vinegar maker shall receive into his custody stale beer, returns of beer or ale, cyder, verjuice, or other liquors for making vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *Sept. 29 to Mar. 25*, yearly, between seven in the morning and five in the evening, and from *Mar. 25 to Sept. 29*, between five in the morning and seven in the evening; on pain of 50l. f. 12.

At what times only to receive liquors.

On receiving such liquors into his custody, he shall shew the same to the gauger before he mixes them with any other liquors, rape, or other materials; on pain of 20l. *Id. f. 13.*

To be shewn to the gauger.

If any vinegar maker shall, without giving notice at the next excise office, or to one of the commissioners, use any storehouse, warehouse, cellar, or other place, for making or keeping any vinegar, vinegar-beer, or liquors preparing for vinegar, he shall forfeit 50l. for every such place. *Id. f. 14.*

Penalty on using any place without giving notice.

If any maker of vinegar for sale shall conceal or convey away any vinegar, or liquor preparing for vinegar, from the view of the gauger, he shall for every barrel forfeit 40s. 7 & 8 W. c. 30. f. 16.

Concealing.

If such maker shall on demand made by such gauger in the day time (or if by night in the presence of a constable,) refuse to permit him to enter his house, storehouse, or other place used by him, and to take an account of the said liquors, he shall forfeit 15l. *Id. f. 17.*

Refusing to admit the gauger.

No person carrying on the trade of a vinegar maker from melasses or sugar or other materials (except malt or corn) shall carry on (either alone or in partnership) the trade of a distiller or rectifier of spirits in the same premises, or within two miles thereof; and all entries made by such person for such purpose shall be void. 26 G. 3. c. 73. f. 55.

Vinegar maker not to be a distiller or rectifier.

All stale beer, returns of beer or ale, cyder, verjuice, or any other liquor proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose,) shall be

What deemed vinegar, &c.

deemed vinegar, or liquors preparing for vinegar. 10 & 11 W. c. 21. f. 11.

Entry and payment of the duty.

Every such vinegar maker shall make entry once a month at the next excise office of all liquors made within that month, and also within a month after such entry shall clear off the duties, on pain of double duty. 12 C. 2. c. 24. f. 29, 30. 1, 2.

All penalties and forfeitures are to be recovered, levied, and mitigated as by the excise laws (a) 43 G. 3. c. 69. f. 4.

Sect. V. (21.) *Wine*.

[28 H. 8. c. 14. f. 2—4.—37 H. 8. c. 23. f. 2, 3.—12 C. 2. c. 25. f. 11. 13.—1 G. 2. ft. 2. c. 17. f. 7, 8.—39 G. 2. c. 19. f. 12.—30 G. 2. c. 19. f. 12.—30 G. 2. c. 59. f. 9.—32 G. 2. c. 19.—f. 1. 6—9.—5 G. 3. c. 46.—18 G. 3. c. 27.—23 G. 3. c. 70.—26 G. 3. c. 59.—f. 8, 9. 11—15. 17—29. 31—40. 42. 44, 45. 47, 48. 50, 51. 57.—27 G. 3. c. 13. f. 13.—30 G. 3. c. 38. f. 6. 8. 10—13. 15, 16. 19.—32 G. 3. c. 59. f. 9.—34 & 40 G. 3. c. 83.—42 G. 3. c. 44. f. 2.—43 G. 3. c. 69. f. 4.—c. 81. f. 6.—49 G. 3. c. 98.]

(Note, wherever *dealer* is used, feller must also be understood.)

Importation of French wines.

By 39 & 40 G. 3. c. 83. *French* wines in bottles or flasks may be imported in *British* ships from *Guernsey*, *Jersey*, or *Alderney*, on payment of the duties.

By 42 G. 3. c. 44. *French* wine was allowed to be imported directly from France on certain conditions.

But wine so imported under either act shall be imported only in packages of six dozen at least of quart bottles, or flasks, on pain of forfeiture. f. 2.

In vessels of what size to be imported.

By the 1 G. 2. ft. 2. c. 17. No wine (except of the growth of *Tuscany*, *Turkey*, or the *Levant*), shall be imported in flasks, bottles, or vessels, less than 25 gallons; on pain of forfeiting the same, or the value; half to the king, and half to him that shall seize or sue by the laws of excise, or in the courts at *Westminster*. f. 7, 8.

And by the 18 G. 3. c. 27. No wines of the growth of *Spain* or *Portugal*, and no *French* wines shall be imported in any smaller vessel than what is commonly called an hog-head; on pain of forfeiture, half to the king and half to the officer of the customs who shall seize and prosecute.

Duty on importation.

By 49 G. 3. c. 98. *Sched. (A.)* various duties of customs are imposed upon wines.

(a) For which see *ante*, Sect. III.

And by the same act a drawback of all the duties is allowed on exportation, or for naval officers.

In estimating the additional duties on foreign wine imposed by 43 G. 3. c. 81. (a) as being found on the first actual survey by the excise officer after the 12th of June 1803, in the stock, or possession of any dealer or seller of foreign wine in bottles, 5 reputed quart bottles shall be reckoned to the gallon, and 252 gallons to the tun. *f. 6.*

Additional duties how payable.

No wine of any sort, exceeding 10 gallons in cask, or three dozen in bottles, imported into any other port shall be removed at the same time and in the same carriage either by land or water, into the port of *London*, or within 20 miles from the *Royal Exchange*, before the difference of the duties payable at the out-ports, and in the port of *London*, in addition to the duties paid on importation, shall have been paid; and without a certificate specifying such payment, and the quantity and quality of such wine; on pain of forfeiture thereof, together with the casks and vessels containing the same, which may be seized by any officer. 27 G. c. 13. *f. 13.*

Removing from the outports to London.

By 26 G. 3. c. 59. Every person who shall deal in or sell foreign wine by wholesale, shall first take out a license from the officers of excise, which they are required to grant without fee; and shall renew the same annually ten days at least before the end of the year, on pain of forfeiting 10*l.* *f. 8, 9.*

License for selling by wholesale.

First take out a license] In the case of *R. v. The Commissioners of Excise*, E. 28 G. 3. it was determined that a person who intends to become a wholesale dealer in foreign wine must take out a license, and enter his warehouse as directed by 26 G. 3. c. 59. *before he lays in his stock*; and that such dealer is not entitled to a permit to remove wine sold, which wine was laid in *before* he took out his license. 2 T. R. 381.

But persons in partnership need not take out more than one license for one house. But such license shall not extend to any other house or place than such as has been entered. 26 G. 3. c. 59. *f. 9.*

Persons in partnership.

By 30 G. 2. c. 19. *f. 2.* No person, unless authorized and enabled as hereinafter prescribed, shall sell or utter by retail, that is, by the pint, quart, pottle, or gallon, or by any other greater or less retail measure, or in bottles, in any less quantity than shall be equal to the measure of the cask or vessel in which the same shall have been or may

Not to be sold in less quantities than may be imported.

(a) This act to continue in force till twelve months after the ratification of peace.

lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100*l.* half to the king and half to the informer, to be recovered as the penalties for offences against the stamp acts. (Provided that the said penalties may be mitigated by the commissioners as they shall think fit; the costs and charges of the officers and informers being always allowed over and above the mitigation. 32 G. 2. c. 19. s. 1.)

License for re-
tailing.

By the 43 G. 3. c. 69. Every retailer of foreign wine shall take out a license from the officers of excise, for which he shall pay, if he have neither a spirit nor beer license

	£ 5	4	0
If he have a beer license but not a spirit license	4	4	0
If he have both a beer and spirit license	2	4	0

Which license shall continue in force until and upon the 10th day of *October* next ensuing the granting thereof, and no longer: Provided nevertheless, that where such license shall be first granted between the 5th day of *April* and the 10th of *October* in any year there shall be charged only a rateable proportion of the money aforesaid, according to the time for which such license shall be granted. 30 G. 3. c. 38. s. 6, 7, 8.

Penalty.

Every person who shall retail any foreign wine, without such license, shall forfeit 5*0l.* s. 9.

To be renewed
annually.

And the same shall be renewed annually ten days at least before the expiration of the former license, on the like penalty of 5*0l.* *Id.*

By 32 G. 3. c. 59. No person by virtue of any license from the commissioners of excise for the sale of foreign wines shall sell the same by retail to be drank in his house, or place thereto adjoining or belonging; except a license shall have been granted to him by the justices or other officers to sell ale and beer in the same house. And the justices and other officers shall have the same jurisdiction, power, and authority over such retailers of foreign wine, as they now have over alehouse keepers. s. 9.

If any person shall sell by retail to be drank as aforesaid any such foreign wine without having such ale license as aforesaid, he shall forfeit the like penalties as persons selling ale without license are subject to by 5 G. 3. c. 46. The same to be recovered and applied, as by that or any other act relating thereto is directed. *Id.*

Licensed person
dying or remov-
ing.

And on the death or removal of any such licensed person, the commissioners and the collectors and surveyors of excise, may authorise the executors or administrators, wife or child of such deceased person, or the assignee or assigns of such person so removing, to carry on such trade, during the
residue

residue of the term for which such license was granted.

30 G. 3. c. 38. §. 10.

Persons in partnership need not take out more than one license for one house or place. But such license shall not extend to any other house or place than such as shall be entered. *Id.*

Persons in partnership.

But no license shall authorise any person to sell wine in any other than such house, shop, or place, in which he shall retail the same at the time of granting such license, and an entry thereof in writing shall be made at the excise office in the name of such person at the time of granting such license. *Id.*

House or place to be entered.

And every person, who shall sell or expose to sale any foreign wine in a less quantity than shall be equal to the quantity in which the same may be lawfully imported by way of merchandize, shall be deemed a retailer within the meaning of this act. §. 15.

Who shall be deemed wholesale, and who retail dealers.

By 26 G. 3. c. 59. Every person who shall have taken out a license for retailing foreign wine, and who shall not take out a license for retailing spirits or ale, shall be deemed a dealer by *wholesale*; but if he is licensed for retailing either spirits or ale, he shall be deemed a *retailer*. §. 11.

And every such *wholesale* dealer shall cause to be painted or written in large legible characters over the outer door, or in the front or on some conspicuous part of each house, &c. and other place by him used for the keeping of foreign wine for sale, the words *dealer in foreign wine*; on the penalty of 50l., for each such house, &c. *Id.* §. 14.

Certain words to be put up.

If he shall put up those words on any unentered place, he shall forfeit 100l. and be subject to the penalties for selling foreign wine without entry. *Id.* §. 15.

Every *retailer* shall cause the word *wine* to be expressed either on a sign hung out, or in some visible place or near the door in the front of his house, or other place made use of for the retailing of wine, to denote that such retailer is a dealer in wine, and liable to take out a license for the retailing thereof: And if any person shall sell wine by retail without fixing or hanging out such token, he shall forfeit 10l. 32 G. 2. c. 19. §. 6.

Every dealer in foreign wine shall make entry in writing at the next excise office of all warehouses, vaults, or other places, by him made use of for keeping foreign wine for sale; on pain of forfeiture of the wine therein, and of the casks, bottles, and packages, containing the same; and also of 100l. for every such place. But this shall not extend to wine sold whilst lying openly on the quay where first landed. 26 G. 3. c. 59. §. 12.

Warehouses, &c. to be entered.

When any such entry shall have been made by any such dealer, no other dealer (not being in partnership with the dealer who made such first entry) shall on any pretence whatsoever make entry of the same, or of any other warehouse or place within the same house or tenement in which such first entry shall then be existing; but every person making such further entry shall be deemed a dealer in foreign wine without entry, and shall be subject to the like penalties as dealers in foreign wine without entry. *f. 13.*

Officers may enter warehouses, &c. and take samples.

Any officer of excise may enter, upon his request, by day or night, (but if in the night in the presence of a constable or other peace officer) any place made use of for keeping wine by any dealer, either by wholesale or by retail, and by tasting, guaging, or otherwise (except wine in bottles) to take an account of all the wine in any vessels except bottles, and also to take account of the wine in bottles in any other manner than by tasting the same, or by uncorking or opening the bottles, and also may take samples of the wine, whether in casks or bottles, paying for the same; and any person obstructing the officer shall forfeit 100*l.* *Id. f. 17, 18.*

Casks, &c. to be marked by the dealer with the quantity they will contain.

Every dealer shall mark upon every cask or vessel containing more than *three* gallons of foreign wine the quantity such vessel is capable of containing, and also the sort of wine kept therein, whether it be French red or white, or foreign red or white; on pain of forfeiture thereof, and the casks or vessels containing the same; which may be seized by any officer. *Id. f. 19.*

Places for keeping wine to be shewn to the officer, and the casks to be marked by him.

Every dealer shall shew to the officer under whose survey he is, every cask or vessel above three gallons capacity, and every bin or place in which he shall keep any foreign wine, on pain of forfeiture thereof, and also of such vessels: And the officer shall mark such casks and bins so shewn to him; and if any person shall rub out or deface such mark; or if any dealer shall without notice given at the excise office set up any vessel or utensil for keeping or containing of wine, or alter or enlarge any vessel, utensil, or bin already set up capable of holding three gallons, or shall have the same in any concealed or unentered place; he shall forfeit for every such bin, vessel, or utensil so set up and altered, 50*l.* *Id. f. 20, 21.*

Notice to be given when wine is intended to be drawn off.

Every wholesale dealer shall, before he begins to draw off or bottle any foreign wine, give six hours notice in writing it within the bills, elsewhere 12 hours, to the officer of excise of his intention to draw off or bottle any such wine, and the particular warehouse or place and the quantity, and into how many casks or bottles the same is intended to be drawn, and what sort of wine, and from what particular cask

or vessel; and such officer may attend if he think fit; and the same shall be packed or piled in the presence of such officer, if he attend, or an account thereof given to him upon his next survey. And no wine shall be removed from the place in which shall have been so deposited without giving like notice on the penalty of 50*l*. But not to extend to a small number of bottles drawn off more or less than is contained in such notice. *Id. f. 22.*

Provided, that if the dealer shall not begin and proceed to draw off or bottle such wine within one hour after the time mentioned in the notice, the same shall be void, and he shall give a fresh notice. *Id.*

But nothing herein contained shall extend to make it unlawful for any wholesale dealer to draw off or bottle any wine at his will and pleasure for the purpose of immediately sending out the same, without giving notice. *Id. f. 22.*

All foreign wine of different sorts shall be kept separate, on the penalty of 50*l*. *Id. f. 23.*

All retail dealers who shall have in their custody any cyder, spirituous or other liquors shall keep the same separate and apart from foreign wine; on pain of forfeiting 10*s*. for every gallon of cyder or spirits which shall not be so kept separate, together with such wine, cyder, and spirits, and the cask, bottles, and packages containing the same; which may be seized by any officer of excise. *Id. 24.*

All cyder, sweets, *British*-made wine, mead, spirits, and other liquors whatsoever, found in any entered place for the keeping or selling of foreign wine by any wholesale dealer, shall be deemed and taken to be foreign wine within the meaning of this act, of the same sort as the wine with which it shall be kept; or if kept separate from any wine, then the same shall be deemed and taken as *French* red wine. *Id. f. 29.*

But no dealer in or seller of foreign wine shall have in his possession any *British*-made wine, or sweets; on pain of forfeiting the same, and also 10*s*. a gallon. *Id. f. 25.*

For the better ascertaining the quantity of wine sold by dealers, every person who shall sell any foreign wine shall keep an account of the quantity sold, sent out, or consumed in each day under three gallons, expressing the number of gallons or bottles; and shall every day enter into a book to be kept for that purpose an account of the gross quantities sold, sent out, &c. the preceding day; and also in another book shall enter each parcel of three gallons or more which shall be sold or sent out in each day, expressing the number of gallons or bottles; which books are to be prepared by the commissioners, and delivered unto the dealer upon demand; but no dealer shall have above one book of each sort in his custody

Exception.

Wine of different sorts to be kept separate.

Cyder and spirits to be kept separate from wine.

Cyder, &c. found amongst wine.

No dealer in foreign wine to have sweets in his possession. An account to be kept of wine daily sold.

custody at one time; and when filled up, it shall be returned to the officer from which it was received, and the truth of the entries shall be verified on oath by such dealer or his servant who kept the same and made the entries therein to the best of his knowledge and belief, to be administered by the officer; and a new book shall be thereupon delivered to the dealer, and so *toties quoties* as often as such book shall be filled up; and such book shall lie open to be perused by the officer; and the dealer shall, at the request of the officer, fill up such books respectively, with the quantity by him sold in each day. And every dealer or seller offending in any of the matters aforesaid, or making any false entry in any such books, shall forfeit 20*l.* *Id.* *f.* 26.

Excess in stock
to be forfeited.

If any officer shall find that the quantity of foreign wine in the stock of any wholesale dealer, added to the quantity for which permits have been granted, and also to the quantity sold, sent out, or consumed in small quantities under three gallons since the last account was taken, exceeds the stock left in hand, on taking the account, after adding the quantity since received by permit (if any); such quantity so found in excess shall be deemed to be made by foreign wine for which no duty has been paid and privately brought in without permit and shall be forfeited, and may be seized by the officer; and the person in whose stock the same is found, shall also forfeit double the value thereof. — But not to extend to an excess of stock occasioned by lawfully receiving wine from any lawful quay, and in the original casks in which the same was imported, and no part drawn thereout. *Id.* *f.* 27, 28.

Not to be re-
moved without
permit.

No foreign wine exceeding three gallons shall be removed without a permit as directed by this act, on pain of forfeiture thereof; and the same shall be seized by any office of excise, *f.* 34.

If not delivered
within the time
limited.

If any wine shall not be delivered within the time limited in the permit (except in case of some unavoidable accident), the same shall be deemed and taken as wine removed without permit. Provided always, that the same shall be restored without delay, if the person who hath the charge thereof at the time of the seizure, enter into recognizance with one surety before a neighbouring justice, in double the value of such seizure, to prove within one month next ensuing to the satisfaction of the commissioners of excise, that such wine through unavoidable accident could not be so delivered and received; and the justice shall certify upon the back of the permit that such recognizance hath been entered into, and also allow such further time for the wine to be delivered, as to him shall seem meet; which indorsement shall have the same force as a permit granted according to this act; and the

the justice shall forthwith transmit every such recognizance to the king's remembrancer in the court of exchequer, §. 31. 35, 36.

By the 5 *An. c.* 27. 231 cubical inches shall be a wine gallon, 63 gallons a hogshead, 126 gallons a butt or pipe, and 252 gallons a ton. §. 17.

Wine measure.

No wine shall be brought into any place made use of by any dealer in foreign wine without an authentic permit granted and given according to the directions of this act, which shall be produced to and left with the officer under whose survey such dealer shall then be, on pain of forfeiture thereof, together with the casks, bottles, and packages containing the same, and the said wine, &c. may be seized by any officer of excise. 26 *G. 3. c.* 59. §. 32.

Wine brought into warehouses without permit.

Every private person (not being a dealer either by wholesale or retail) who shall have occasion to remove any foreign wine from one place to another shall have a permit from the officers of excise, on proof of payment of duties, and on a request note, specifying the quantity and kind and number and contents of the vessels, and whether by land or water, and by what mode of conveyance; on pain of forfeiture thereof, with the casks, bottles, and package containing the same, and also the horses, cattle, carriages, or boats used in the removal thereof; and the same may be seized. §. 33.

Private persons removing wine to have a permit.

Where any permit shall have been granted to any dealer in wine, or private person as aforesaid, and he shall not actually and really send away the wine by such permit authorized, nor return the permit to the officer who granted the same before the expiration of the time limited therein, he shall for every gallon of wine mentioned in such permit forfeit treble the value thereof, to be estimated according to the highest price of such sort of wine of the best quality in *London*. §. 37, 38.

But if not removed, such permit to be returned.

Where such permit shall not be by the dealer returned as aforesaid, and upon taking an account of the stock remaining in his hands there shall not appear a decrease to answer the wine mentioned in the permit, then, and in such case, such dealer shall forfeit the like quantity of wine so permitted and not removed, to be seized by the officer, out of any wine in his custody of the denomination given in the permit; but if he shall not then have such quantity of the same denomination in his custody, he shall forfeit 100*l.* §. 37.

Where the decrease in stock is not proportionate to the permit.

If any person shall counterfeit or forge or cause to be so done any such permit, or fraudulently alter or erase any permit; or knowingly or willingly give or receive any false or untrue permit, or publish or make use of the same, or receive the same with any wine; or shall fraudulently alter

Using false permits, or forging recognizances, &c.

alter or erase such certificate or indorsement, or knowingly or willingly publish or make use of any such; he shall forfeit 500*l*. *f*. 39, 40.

Hiding or concealing foreign wine.

In case any foreign wine shall be fraudulently deposited, hid, or concealed with intent to defraud his majesty of the duties, the same shall be forfeited, together with the casks, bottles, and packages containing the same. And the better to enable the officers to make discovery thereof, if any officer shall have cause to suspect that any wine is so fraudulently deposited, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office of excise, upon oath made by such officer before two commissioners of excise, elsewhere before a justice, setting forth the grounds of his suspicion; such commissioners or justice respectively, before whom such oath shall be made, may by warrant empower such officer by day or night, (but if in the night in the presence of a constable or other peace officer) to enter such suspected place, and to seize and carry away such wine which shall be found so concealed as forfeited, together with the casks and packages. *f*. 42.

Obstructing or attempting to corrupt officers.

If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this act; or shall rescue any foreign wine after seizure, or steal, break, destroy, or damage any cask, vessel, bottle, or other package whilst any officer is attempting to seize the same; or shall offer to bribe or corrupt any officer to do contrary to his duty, whether such offer be accepted or not; he shall forfeit 100*l*. for every offence. *f*. 44, 45.

Opening wine sealed for exportation:

If any person (except the proper officer) shall open any package of foreign wine sealed for exportation, or shall wilfully destroy or deface the seal or mark, he shall forfeit 50*l*. *f*. 47.

Landing wine which has been shipped.

Provided, that if any wine so shipped for exportation shall be unloaded, or laid on land (shipwreck, &c. excepted,) the same, or the value thereof, shall be forfeited, over and above the penalty in any bond which may have been given, *f*. 48.

Officers not entitled to rewards, unless notice of seizure is given in 12 hours.

But no officer of the customs shall be entitled to any reward for any seizure, unless he give notice thereof within 12 hours at the next excise office, or to the supervisor of excise. *f*. 50.

No dealer in wine to act as a justice.

No person being a dealer in or seller of foreign wine, or any way interested or concerned therein, shall during such time act as a justice in the execution of this act; and all acts done by any such person shall be utterly void. *f*. 51.

Penalties how to be recovered.

Finally, all fines, penalties, and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated as by the

the laws of excise (a), or in the courts at *Westminster*, and distributed half to the king, and half to him that shall sue. 35. 30 G. 3. c. 38. f. 16. 43 G. 3. c. 69. f. 4.

And all powers in former acts relating to the retailing of wine shall extend to this act, unless repugnant to or altered thereby. 30 G. 3. c. 38. f. 19.

N. B. Respecting the indemnity for officers seizing under the 26 G. 3. c. 59. see f. 57. of that act, and 23 G. 3. c. 70. *ante*.

Provided, that nothing herein shall be prejudicial to the privileges of the two universities. 30 G. 2. c. 19. f. 9. 26 G. 3. c. 59. f. 11. 30 G. 3. c. 38. f. 11.

Not to extend to the two universities.

Nor to the company of vintners in *London*, or to any other city or town corporate; but they may enjoy such privileges as they have heretofore lawfully enjoyed. Provided, that no person, who shall be admitted to the freedom of the said company of vintners by redemption only, shall be exempted from taking such license: but only the freemen of the said company who have been already admitted to their freedom, or who shall after the said 5th day of *July* 1757 be admitted to their freedom in right of patrimony or apprenticeship, shall be entitled to such exemption. 30 G. 2. c. 19. f. 11. 26 G. 3. c. 59. f. 11. 30 G. 3. c. 38. f. 12.

Nor to the vintners' company.

Nor to extend to the mayor and burgessees of *St. Albans* for appointing and licensing by virtue of their charter three wine taverns, for and towards the maintenance of the free-school there. 30 G. 2. c. 19. f. 12. 26 G. 3. c. 59. f. 11. 30 G. 3. c. 38. f. 13.

Nor to the mayor, &c. of *St. Albans*.

The lord chancellor, lord treasurer, lord president, lord privy seal, and two chief justices, or any three of them, shall yearly between *Nov.* 20 and *Dec.* 31 set the prices of foreign wine sold in gross; so that proclamation be made thereof in term time in the court of chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40s. half to the king, and half to the mayor if in a town corporate; and if not, to him that shall sue. 28 H. 8. c. 14. f. 2, 3. 37 H. 8. c. 23. f. 2. 12 C. 2. c. 25. f. 13.

Setting the prices of wines.

And the justices of the peace, and mayors, may hear and determine the faults of such offenders, and punish them by imprisonment, or otherwise, by their discretions. 28 H. 8. c. 14. f. 14.

By the 37 H. 8. c. 23. If any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners, and the

(a) For which see *ante*, Sect. III.

mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. *f. 3.*

Adulterating
wines.

No person selling wine shall mix wines together, nor with any other thing; on pain that the seller in gross shall forfeit 100*l.* and the retailer 50*l.*, half to the king, and half to him that shall sue in any court of record. 12 *G. 2. c. 25. f. 11.*

Sect. V. (22.) *Wire.*

[10 *An. c. 26. f. 49—60. 64. — 12 G. c. 28. f. 30. — 15 G. 2. c. 20. f. 8, 9. — 22 G. 2. c. 36. — 24 G. 2. c. 40. f. 29. — 10 G. 3. c. 44. f. 1. — 24 G. 3. c. 41. sess. 2. f. 7, 8. — 26 G. 3. c. 77. f. 8. — 28 G. 3. c. 37. f. 15. 21. — 43 G. 3. c. 68. — 43 G. 3. c. 69. — 49 G. 3. c. 98.]*

Importation.

By 43 *G. 3. c. 68.* several duties are imposed on *wire* imported, as particularly set forth in tables annexed to the act.

Home duty.

And by 43 *G. 3. c. 69. Sched. (A.)* duties are laid upon *wire* made in *Great Britain*; and by 49 *G. 3. c. 98.* new duties are imposed.

License.

Every *wire drawer* or other person who shall draw any gilt or silver *wire*, commonly called *big wire*, shall take out a license for which he shall pay 2*l.*, and shall renew the same annually ten days at least before the end of the year, on pain of 20*l.* *Id. 24 G. 3. c. 41. sess. 2. f. 7.*

But persons in partnership need only take out one license for one house. *f. 8.*

Places of making to be entered.

Every person who shall draw any gold or silver into such *wire* as aforesaid called *big wire*, shall first give notice in writing at the next office for the said duties of his name and place of abode, and where he intends to work, on pain of 20*l.*; and no refiner, *wire-drawer*, or other person, shall draw any gold or silver into such *big wire*, at any place other than some common bar-house to be approved by the commissioners, on pain of 20*l.* 10 *An. c. 26. f. 49.*

And all gilt and silver *wire*, and bars for making it, which shall be found in any private work-house, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. *f. 59.*

Officer to enter and survey.

The officer shall at all times, by day or night, (if at night in presence of a constable,) be permitted on his request to enter the bar-house, work-house, or other place used for making of such *wire*, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such

such copy (after demand in writing. 12 G. c. 28. f. 30.) he shall forfeit 40s. f. 52.

If any such maker shall obstruct the officer in the execution of his office, he shall forfeit 20l. f. 55. Obstructing the officer.

If he shall in weighing hinder the officer from taking a just account, or by any contrivance hinder or impede him, he shall forfeit 100l. 26 G. 3. c. 77. f. 8.

The maker shall keep just weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10l. f. 54. Scales and weights.

By the 10 G. 3. c. 44. f. 1. if he shall use false or insufficient scales or weights, he shall forfeit 100l.; but not to be prosecuted both on this and the former act. And by 28 G. 3. c. 37. f. 15. the same shall be forfeited, and may be seized by any officer.

Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of and marked by the said officer, after the gold is laid on; and on refusal to admit the officer, the refiner or maker shall forfeit 20l., half to the king, and half to him that shall sue. 15 G. 2. c. 20. f. 8, 9. Ingots to be weighed.

If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar-house, an allowance of one-fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 Ann. c. 26. f. 53. Allowance for waste.

No wire-drawer shall (on pain of 40l.) remove any gilt or silver wire, of which no account hath been taken, from the bar-house or place of making, without giving to the officer 24 hours' notice. f. 56. Removing before surveyed.

Wire not surveyed shall be kept separate from that which hath been surveyed for 24 hours after making, unless it shall be sooner surveyed; on pain of 10l. f. 57. Wire unsurveyed to be kept separate.

If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20l. f. 58. Concealing.

The maker shall once in every month make entry in writing at the next office of all the wire by him made, setting forth the weight and kinds, and how much was made in each week; on pain of 100l. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administered by the officer. f. 50. Entry of wire made.

And the duty shall be cleared off in six weeks after entry, on pain of double duty. f. 51. Payment of the duty.

Power of the
justices.

All the powers of the excise laws shall be in force for managing these duties; and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise (*a*), or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 *An. c.* 26. *f.* 64. 24 *G. 2. c.* 40. *f.* 29. 24 *G. 3. sess. 2. c.* 41. 43 *G. 3. c.* 69. *f.* 4.

Utensils liable.

All such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon as if such debtor or offender were the lawful owner. 10 *An. c.* 26. *f.* 60. 28 *G. 3. c.* 37. *f.* 21.

For regulations concerning the true making of gilt and silver wire, see the act of 15 *G. 2. c.* 20. and 28 *G. 3. c.* 37.

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G. 2. c.* 36.

Any person obstructing an officer of excise in execution of this act shall forfeit 200*l.* *f.* 46.

All penalties recoverable as by the laws of excise (see *ante*, Sect. III.), and actions to be brought within three months after the fact committed. *f.* 49, 50.

Commissioners
of excise may
restore seizures
upon such terms
and conditions
as they may
deem proper.

By 47 *G. 3. sess. 2. c.* 30. *f.* 19. It is enacted, that after the passing of this act, in case any goods or commodities whatsoever, or any ships, vessels, boats, horses, cattle, or carriages, shall be seized as forfeited, by virtue or in pursuance of any act or acts of parliament relating to the revenue of excise, it shall be lawful for the commissioners of excise in *England*, or the major part of them, on evidence given to their satisfaction that the forfeiture arose without any design or intention of fraud in the proprietor or proprietor, claimant or claimants, and person or persons having the custody, care, or management, for the time being, of such goods, commodities, ships, vessels, boats, horses, cattle, or carriages, to order the same to be restored to such proprietor, &c. &c. in such manner and on such terms and conditions as under the circumstances of the case, shall appear to the said commissioners to be reasonable, and as they shall think fit to direct; and if such proprietor, &c. &c. shall comply with the terms and conditions so prescribed, it shall not be lawful for such goods, &c. &c. to be proceeded against in any manner for the condemnation thereof; but if he shall not comply with the terms and conditions so prescribed, such goods, &c. &c. may and shall be proceeded against

(a) For which see *ante*, Sect. III.

for the condemnation thereof as if this law had not been made: Provided always, that if such proprietor, &c. &c. shall accept the terms and conditions prescribed by the said commissioners, such proprietor, &c. &c. shall not, nor shall any of them have or be entitled to any recompence or damage on account of the seizure or detention of such goods, &c. &c.]

A. Information before one justice upon 9 G. 2. c. 35. s. 21. for carrying run or prohibited goods, liable to the duties of customs or excise.

Westmorland. *BE* it remembered, that on the — day of —, in the — year of the reign of our sovereign lord George the third, of the United Kingdom of Great Britain and Ireland, king, defender of the faith, and in the year of our Lord one thousand eight hundred and —, at — in the said county; A. I. of — in the said county, —, who prosecutes as well for the poor of the said parish of — in the said county, as for himself in this behalf, in his proper person cometh before me J. P. esquire, one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and as well for the poor in the said parish of — in the said county as for himself, giveth me the said justice to understand and be informed that after the 24th day of June 1736, to wit, on the — day of —, in the year of our Lord one thousand eight hundred and —, at the parish of —, in the said county, one — being one of his majesty's officers of the customs [or excise], did find and seize upon and in the custody of one A. O. late of — in the said county, divers, to wit [here set forth the goods found and the value thereof], being goods, wares, and merchandize liable to the payment of the duties of customs [or excise] to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit to the parish of — aforesaid, without payment of the said duties for the same; and that the said A. O. was at the time of such finding and seizing of the said goods, wares, and merchandize, at the parish aforesaid employed in carrying the same, he the said A. O. then and there well knowing the said goods, wares, and merchandize, to have been clandestinely run and imported as aforesaid without payment of the said duties of customs, [or excise] contrary to the form of the statute in such case made and provided; whereby and by force of the said statute the said A. O. hath forfeited the sum of —

pounds, being treble the value of the said goods, wares, and merchandize so found and seized as aforesaid; one moiety thereof to the said A. I. the said informer, and the other moiety thereof to the poor of the parish of ———, being the parish where the said offence was committed; and the said A. I. who prosecutes as aforesaid, prays that the said A. O. may be convicted of the said offence; and that one moiety of the said forfeiture may be adjudged to the said A. I., and the other moiety thereof to the poor of the said parish of ———, according to the form of the statute in such case made and provided; and that the said A. O. may be summoned to answer the said complaint and information, and to make defence thereto.

Before me, J. P.

A. I.

B. Summons before one justice upon the 9 G. 2.
c. 35. s. 21. for carrying run or prohibited goods.

Westmorland. { To A. O. of ——— in the said
county, ———.

WHEREAS an information hath this day been made by A. I. of ———, in the said county ———, who prosecutes as well for the poor of the said parish of ———, as for himself in this behalf before me J. P. esquire, one of the justices of our lord the now king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, setting forth that after the 24th day of June 1736, to wit, on the ——— day of ——— in the year of our Lord ———, at the parish of ——— in the said county, one A. I. being one of his majesty's officers of the customs [or excise] did find and seize upon and in the custody of you, A. O. late of ——— in the said county [here set forth the goods found and the value thereof], being goods, wares, and merchandize liable to the payment of the duties of customs [or excise] to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of ——— aforesaid; and that you the said A. O. was at the time of such finding and seizing of the said goods, wares, and merchandize at the parish aforesaid, employed in carrying the same, you the said A. O. then and there well knowing the same goods, wares, and merchandize to have been clandestinely run and imported as aforesaid, without payment of the said duties of customs, [or excise] contrary to the form of the statute in such case made and provided; whereby and by force of the said statute you the said A. O. have forfeited the sum of ——— pounds, being treble the value of the said goods, wares, and merchandize so found and seized as aforesaid; one moiety thereof to the said A. I.

A. I. the said informer, and the other moiety thereof to the poor of the said parish of ——— [or as the case may be], and praying that you the said A. O. may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said A. I. and the other moiety thereof to the poor of the said parish of ——— [or as the case may be], according to the form of the statute in that case made and provided. These are therefore to require you the said A. O. to appear before me at the house of ——— in ——— in the said county, on ——— the ——— day of ——— next ensuing, at the hour of ——— in the ——— noon of the same day, to answer the matter of complaint contained in the said information, and to shew cause (if any you have) why you should not be convicted of the said offence charged in the said information. Given under my hand and seal the ——— day of ——— in the year of our Lord ———.

C. Conviction of a person before one justice on 9 G. 2. c. 35. s. 21. for carrying run or prohibited goods.

Westmorland. *BE* it remembered, that on the ——— day of ——— in the ——— year of the reign of our sovereign lord George the third, of the United Kingdom of Great Britain and Ireland, king, defender of the faith, and in the year of our Lord ———, at ——— in the said county, A. I. of ——— in the said county, ——— who prosecutes as well for ——— as for himself in this behalf, in his proper person cometh before me J. P. esquire, one of the justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and as well for ——— as for himself, giveth me the said justice to understand and be informed that after the 24th day of June 1736, to wit, on the ——— day of ———, in the year of our Lord ———, at the parish of ——— in the said county, one A. I. being one of his majesty's officers of the customs [or excise], did find and seize upon and in the custody of A. O. late of ——— in the said county [here set forth the goods found and seized], of great value, to wit, of the value of ——— pounds of lawful money of Great Britain, being goods, wares, and merchandizes liable to the payment of the duties of customs, [or excise] to and for the use of his majesty, which had been brought from parts beyond the seas by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of ——— aforesaid; and that the said A. O. was, at the time of such finding and seizing of the said goods, wares, and

merchandizes at the parish aforesaid employed in carrying the same, be the said A. O. well knowing the same goods, wares, and merchandize to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; whereby and by force of the said statute, the said A. O. hath forfeited the sum of ——— pounds, being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, one moiety thereof to the said A. I. the said informer, and the other moiety thereof to ———: and the said A. I. who prosecutes as aforesaid prays that the said A. O. may be convicted of the said offence, and that one moiety of the said forfeiture may be adjudged to the said A. I. and the other moiety thereof to ———, according to the form of the statute in that case made and provided: [And afterwards on the ——— day of ———, in the year aforesaid, at the parish of ——— aforesaid, in the county aforesaid, the said A. O. having been previously duly summoned to appear before me the said J. P. so being such justice as aforesaid, at this time and place to answer the matter of complaint contained in the said information (which is now duly proved before me upon the oath of ———); if the defendant does not appear, say, (a),] and the said A. O. being now here solemnly called does not appear, but therein makes default, and does not make any defence to the said charge contained in the said information. Whereupon I the said J. P. so being such justice as aforesaid do now proceed to examine into the truth of the said complaint contained in the said information; and thereupon, on the same day and year last aforesaid, at the parish of ——— aforesaid, in the county aforesaid, one A. W. a credible witness in this behalf, cometh before me the said justice in his proper person, and on his corporal oath upon the holy evangelists of God, now administered to him by me the said justice, (I the said justice having competent power and authority to administer the said oath to the said ——— in this behalf) he the said ——— deposeth and saith, that [here set forth the time, place, and manner of seizure, the circumstances to prove the goods to be run goods, &c. and the want of a permit where a permit is required, is a material one: also the circumstances to prove that the defendant knew them to be run goods, &c. and the value of the goods.] And also on the same ——— day of ——— in the year of our Lord ——— aforesaid, at ——— aforesaid, one B. W. another credible witness comes before me the said justice, and on his corporal oath upon the holy evangelists of God now administered to him by me the said justice, deposeth and saith that [here set forth his evidence]. Whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly appears to me the said justice that the said A. O. is guilty of the premises above charged upon him, in manner and form as in and by the said information is alleged: it is therefore adjudged

judged by me the said justice that the said A. O. be convicted, and he is hereby convicted by me the said justice of the said offence, charged upon him in and by the said information, according to the form of the statute in that case made and provided: and I do award and adjudge that the said A. O. for his said offence hath forfeited and do forfeit the sum of — pounds of lawful money of Great Britain, being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, to go and be distributed, one moiety thereof to — and the other moiety thereof to the said A. I. the said informer, according to the form of the statute in that case made and provided. In witness whereof, I the said justice to this record of conviction have put my hand and seal, at the parish of — aforesaid, in the county aforesaid, the said — day of — in the said — year of the reign of our said sovereign lord king George the third, &c. and in the year of our Lord —.

(a) If the defendant appear and defend, say,

And afterwards, on the — day of —, in the year aforesaid, at the parish of — aforesaid, in the county aforesaid, he the said A. O. personally appearing and being present before me in pursuance of my summons issued for that purpose, is asked by me if he can say any thing for himself why he the said A. O. should not be convicted for the premises above charged upon him, in form aforesaid, who pleadeth that he is not guilty of the said offence above charged upon him, in form aforesaid; whereupon I do now proceed to examine into the truth of the said complaint contained in the said information: and hereupon on the same day and year last aforesaid, at the parish of — aforesaid, in the county aforesaid, one A. W. a credible witness in that behalf cometh before me the said justice in his proper person; and on his corporal oath upon the holy evangelists of God now administered to him by me the said justice, (I the said justice having competent power and authority to administer the said oath to the said — in this behalf, he the said — deposeth and saith in the presence and bearing of the said A. O. that [here set forth the evidence, and if the witness is cross-examined, add such cross-examination;] and also on the same — day of —, in the year of our Lord — aforesaid, at — aforesaid, one — another credible witness, cometh before me the said justice, and on his corporal oath upon the holy evangelists of God now administered to him by me the said justice, deposeth and saith in the presence and the hearing of the said A. O. that [here state his evidence; and if the defendant produce any witnesses, insert their evidence in the same manner].

D. Warrant of distress before one justice, upon 9 G. 2. c. 35. s. 21. for carrying run or prohibited goods.

Westmorland.

{ To the constable of — in the said county.

WHEREAS by a certain conviction under my hand and seal, bearing date the — day of — in the year of our Lord —, one A. O. late of the parish of — in the said county, was and is duly convicted before me J. P. one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, upon the information of A. I. of — in the said county, —, who prosecuted as well for — as for himself in this behalf, and upon the oath of —, a credible witness in that behalf, of a certain offence committed by the said A. O. for that after the twenty-fourth day of June 1736, to wit, on the — day of — in the year of our Lord —, in the parish of — in the said county, one — being one of his majesty's officers of the customs [if so] did find and seize upon and in the custody of the said A. O. [here set forth the goods found and seized], of great value, to wit, of the value of — pounds of lawful money of Great Britain, being goods, wares, and merchandizes liable to the payment of the duties of customs, [or excise], which had been brought from parts beyond the seas by way of merchandize and had been unshipped and clandestinely run and imported into this kingdom, to wit, to the parish of — aforesaid; and for that the said A. O. was at the time of such finding and seizing of the said goods, wares, and merchandizes at the parish aforesaid employed in carrying the same, he the said A. O. then and there knowing the same goods, wares, and merchandizes to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; and the said A. O. was for his said offence by me adjudged to forfeit the sum of — pounds of lawful money of Great Britain, being treble the value of the goods, wares, and merchandizes so found and seized as aforesaid to be distributed and to go and be applied, one moiety thereof to the said —, and the other moiety thereof to the said A. I. the said informer, according to the form of the statute in such case made and provided. These are therefore to command you to levy the said sum of — pounds, being treble the value of the said goods, wares, and merchandizes, so found and seized, as aforesaid, by distress and sale of the goods and chattels of the said A. O.; and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of
within

within ——— (a) days, unless the said sum of ——— pounds for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby commanded to certify to me the said justice on the ——— day of ——— next ensuing what you shall do by virtue of this my warrant. Given under my hand and seal at ——— aforesaid, in the county aforesaid, the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, &c. and in the year of our Lord ———.

Return where no goods can be found, to be indorsed on the back of the warrant.

I Do hereby certify to J. P. the justice within named, that the within-named A. O. hath not any goods or chattels whereof I can levy the within mentioned sum of ——— pounds, or any part thereof, as within I am commanded. Dated this ——— day of ———.

A. C. Constable of ———
within named.

Return where part is levied.

I Do hereby certify to J. P. the justice within named, that by virtue of the within warrant I have levied by distress and sale of the goods and chattels of the within named A. O. the sum of ——— pounds, in part of the within mentioned sum of ——— pounds, which said sum of ——— pounds I have ready before the said justice, as within I am commanded; and I do further certify to the said justice that the said A. O. hath not any other goods or chattels whereon I can levy the residue of the said sum of ——— pounds, or any part thereof. Dated this ——— day of ———.

A. C. Constable of ———
within named.

E. Commitment by one justice upon 9 G. 2. c. 35. s. 21. for want of distress, (or where part only is levied,) for carrying run or prohibited goods.

Westmorland. { To the constable of ——— in the said county,
and to the keeper of the house of correction at ——— in the said county.

*W*HEREAS A. O. late of the parish of ——— in the said county, on the ——— day of ——— last past, was

(a) By 27 G. 3. c. 20. not more than eight, nor less than four days.

duly convicted before me J. P. one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed; upon the information of A. I. of ——— in the said county, ———, who prosecuted as well for ——— as for himself in this behalf, and upon the oath of A. W. a credible witness in that behalf, of a certain offence committed by the said A. O. for that after the 24th day of June 1736, to wit, on the ——— day of ———, in the year of our Lord ———, at the parish of ——— in the said county, one ——— being one of his majesty's officers of the customs [or excise], did find and seize upon and in the custody of the said A. O. [here set forth the goods found and seized] of great value, to wit, of the value of ——— pounds of lawful money of Great Britain, being goods, wares, and merchandizes liable to the payment of the duties of customs, [or excise] which had been brought from parts beyond the seas, by way of merchandize, and had been unshipped and clandestinely run and imported into this kingdom, to wit, the parish of ——— aforesaid, and for that the said A. O. was at the time of finding and seizing the said goods, wares, and merchandizes at the parish aforesaid, employed in carrying the same, he the said A. O. then and there well knowing the said goods, wares, and merchandizes to have been clandestinely run and imported as aforesaid, contrary to the form of the statute in such case made and provided; and the said A. O. was, for his said offence, by me adjudged to forfeit the sum of ——— pounds of lawful money of Great Britain, being treble the value of the said goods, wares, and merchandizes so found and seized as aforesaid, to be distributed, and to go and be applied, one moiety thereof to ———, and the other moiety thereof to the said A. I. the said informer, according to the form of the statute in such case made and provided; and whereas on the ——— day of ——— last past, in the year aforesaid, I did issue my warrant to the constable of ———, commanding him to levy the said sum of ———, being treble the value of the goods, wares, and merchandizes, so found and seized as aforesaid, by distress and sale of the goods and chattels of him the said A. O., and that the said constable should certify to me the said justice on the ——— day of ——— now last past what he should do by virtue of my said warrant; and whereas it duly appears to me, by the return of ———, constable of ——— aforesaid, dated the said ——— day of ——— last past (a), that the said A. O. hath not any goods or chattels whereof he could levy the said sum of ———, or any part thereof, as by the said warrant is directed; [(a) or if part is levied, say, after the words, "last past," he hath levied by distress and sale of the goods and chattels of the said A. O. the sum of ——— pounds, in part of the said sum of ——— pounds; and it further appears to me by the return of the said constable, that the said A. O. hath not

any other goods or chattels whereof he could levy the residue of the said sum of ———, or any part thereof, as by the said warrant he was commanded.] These are therefore to command you the said constable of ——— aforesaid, to apprehend the said A. O. and him safely to convey to the house of correction at ——— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction, to receive the said A. O. into the said house of correction, and there to whip him and keep him to hard labour for the space of three months, and for your so doing this shall be your sufficient warrant. Given under my hand and seal at ———, this ——— day of ———, in the ——— year of the reign of his present majesty king George the third, and in the year of our Lord ———.

F. General form of an information or complaint
before two justices upon 12 C. 2. c. 24. s. 45.

Westmorland. *BE* it remembered, that this ——— day of ——— in the ——— year of the reign of our sovereign lord king George the third, at ——— in the said county, cometh A. I. of ——— gentleman, in his proper person, and as well for our said lord the king as for himself exhibited to us J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county, residing near the place where the offence herein-after mentioned was committed, an information and complaint, and thereby informeth us that at several times between the ——— day of ———, and the ——— day of ——— [or on the ——— day of ——— as the case may be] now last past one A. O. of the parish of ——— in the said county, yeoman, did [here set forth the offence] contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of ——— [here set forth the forfeiture]; and thereupon the said A. I. who as well for his said majesty as for himself doth prosecute, humbly prays the judgment of us the said justices in the premises, and that he may have one moiety [or as the case may be] of the said forfeiture, according to the form of the statute in such case made and provided, and that the said A. O. may be summoned to answer the said premises, and to make defence thereto before us the said justices.

A. I.

Exhibited before us the day and
year first above written, J. P.
K. P.

G. General form of a summons upon 12 C. 2.
c. 24. f. 45.

Westmorland. { To A. O. ——— in the said county,
yeoman.

WE J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the said county, do hereby give you notice, that A. I. of ——— gentleman, hath this day exhibited before us an information against you for the sum of ——— [here set forth the forfeiture] by you incurred, for and by reason of your [here set forth the offence], contrary to the form of the statute in such case made and provided, you are therefore hereby required to appear before us at the house of ———, known by the sign of the ——— in ——— in the said county, on the ——— day of ——— now next ensuing, at ——— of the clock, in the ——— noon of the same day, then and there to answer to the said information, and to make defence thereto; but if you neglect to appear, we shall proceed as if you were personally present. And we do further authorize and require Mr. O. X. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place aforesaid, then and there to make a return thereof to us the said justices. Given under our hands the ——— day of ——— in the year of our lord ———.

H. Form of a record of conviction upon 12 C. 2.
c. 24. f. 45.

Westmorland. *BE* it remembered, that on this ——— day of ——— in the ——— year of the reign of our sovereign lord George the third, of the united kingdom of Great Britain and Ireland, king, defender of the faith, at ——— in the said county, A. I. one of his said majesty's collectors of excise [or whoever is the informer] in his proper person cometh before us J. P. and K. P. esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and as well for our said lord the king as for himself in this behalf giveth us the said justices to understand and be informed that A. O. of ——— in the said county, ———, within the space of ——— now last past, that is to say, on the ——— day of ——— at the parish of ——— in the said county, did [here set forth the offence] contrary to the form of the statute in that case made and provided, whereby, and by force of the said statute, the said A. O. hath forfeited for his

his said offence the said sum of ——— pounds, one moiety thereof (all necessary charges for the recovery thereof being first deducted) to his majesty, and the other moiety thereof to the said A. I. [or as the case may be]; and the said A. I. prays that the said A. O. may be convicted of the said offence, according to the statute in that case made and provided; and afterwards, on the ——— day of ——— in the ——— year of the reign of our said lord the now king, at ——— aforesaid, the said A. O. having been previously summoned in pursuance of our summons issued for that purpose, to appear before us the said justices to answer and make defence to the matters contained in the said information (a), appeareth and is present before us the said justices, and having heard the same he is asked by us the said justices if he can say any thing for himself why he should not be convicted of the said offence wherewith he is charged in manner aforesaid; and thereupon he the said A. O. says that he is not guilty of the said offence, whereupon we the said J. P. and K. P. so being such justices as aforesaid, do now proceed to examine into the truth of the said complaint contained in the said information in the presence and hearing as well of the said A. I. as of the said A. O. and thereupon, on the same day and year last mentioned, at ——— aforesaid in the county aforesaid A. W. a credible witness in this behalf comes in his proper person before us the said justices to prove the said charge contained in the said information against the said A. O. and is now here by us the said justices sworn, and does before us the said justices take his corporal oath upon the holy gospel of God to speak the truth the whole truth and nothing but the truth of and concerning the matters contained in the said information, we having administered and having a competent power to administer such oath to him in that behalf; and the said A. W. being so sworn does on his said oath say and depose in the presence and hearing of the said A. O. that on the ——— day of ——— [here state the offence as proved by the witness]; and the said A. O. does not produce any evidence to contradict the proof aforesaid; wherefore it manifestly appears to us the said justices that the said A. O. is guilty of the offence charged upon him by the said information; it is therefore considered and adjudged by us the said justices that the said A. O. be convicted, and he is accordingly convicted of the said offence charged upon him by the said information; and we do hereby adjudge that the said A. O. for the said offence hath forfeited the sum of ———l. of lawful money of Great Britain, but we do mitigate the same to the sum of ———l. and do adjudge and order that the said A. O. do pay the said sum of ———l. to be distributed as the law directs. In witness whereof we the said justices to this present conviction have set our hands and seals, at ——— in the said county, the ——— day of ——— in the year of our Lord ———.

(a) If

(a) If the defendant does not appear, say,

And the said A. O. being now here solemnly called, does not appear, but therein makes default, and does not make any defence to the said charge contained in the said information, whereupon we the said J. P. and K. P. so being such justices as aforesaid do now proceed to examine into the truth of the said complaint contained in the said information; and thereupon on the same day and year last aforesaid at the parish of ——— aforesaid, in the county aforesaid, one A. W. a credible witness in this behalf cometh before us the said justices, in his proper person and on his corporal oath upon the holy evangelists of God now administered to him by us the said justices, (we the said justices having competent power and authority to administer the said oath to the said A. W. in this behalf,) he the said A. W. deposeth and saith [here state the offence as proved by the witness]; whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly, &c.

I. Warrant of distress for a penalty upon 12 C. 2.
c. 24. s. 45.

Westmorland. { To O. X. and P. X. officers of excise, and
to either of them.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, do in his said majesty's name authorise and command you or one of you that you seize upon the goods and chattels [or utensils, &c. as the case may be] of A. O. of ——— in the county aforesaid, ——— and levy the sum of ———l. of lawful money of Great Britain, by us mitigated and lessened from the sum of ———l. of like lawful money [if the case be so], recovered against him by A. I. gentleman, who prosecuted as well for our sovereign lord the king as for himself for a certain offence committed by the said A. O. against the laws and statutes of excise whereof he the said A. O. is duly convicted before us, and for the levying thereof you are to seize, take, and carry away the goods and chattels [or utensils, &c.] aforesaid, and if in ——— days [not less than four, nor more than eight days] next after such seizure the said sum of ——— together with the reasonable charges of taking and keeping the said goods and chattels [or utensils, &c.] shall not be paid, then and in such case after the expiration of the said ——— days you are to make sale thereof or of so much thereof as shall be sufficient to levy the said sum of ———l. which when so levied you are forthwith to pay to the collector of excise of the district for the
time

time being [or, as the case may require], to be by him distributed according to the statute in such case made and provided. And if any overplus shall remain of the money arising by such sale, you are to render such overplus to the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case sufficient distress cannot be found whereon to levy the said sum of ———, you are forthwith to certify the same unto us, together with a return of this precept. Given under our hands and seals the ——— day of ——— in the year ———.

A return of want of sufficient distress to be indorsed on the back of the warrant.

Westmorland. *I* O. X. one of the within named officers of excise do hereby certify to J. P. and K. P. esquires, the justices within mentioned, that by virtue of the within warrant I have made diligent search for the goods and chattels [or utensils, &c.] of the within named A. O., and that I can find none; and that I do not know or can find that the said A. O. hath any goods or chattels [or utensils, &c.] whereon the within sum of ——— may be levied. As witness my hand, the ——— of ——— in the year ———.

K. Commitment for want of distress upon 12 C. 2. c. 24. s. 45.

Westmorland. { To O. X. and P. X. officers of excise and to either of them, and to the keeper of the common gaol at ——— in the said county.

WHEREAS we whose hands and seals are hereunto set, two of his majesty's justices of the peace in and for the said county, by our warrant under our hands and seals bearing date the ——— day of ——— now last past did require and command you the said O. X. and P. X. or one of you to levy the sum of ——— l. therein mentioned upon the goods and chattels [or utensils, &c. as the case may be] of A. O. of ——— in the said county, ———. And whereas you the said O. X. by a return and certificate under your hand bearing date the ——— day of ——— now last past have certified to us that diligent search hath been made for such goods and chattels, [or utensils, &c.] but that you can find none whereon to levy the said sum of ——— l.

or any part thereof. We the said justices do therefore in his said majesty's name require and command you the said O. X. and P. X. or one of you to take the body of the said A. O. and him forthwith to carry to the common gaol at ——— in the said county, and there to deliver him into the custody of the keeper of the said common gaol, together with this warrant; and we the said justices do hereby also command you the said keeper of the said common gaol, to receive into and safely keep in your custody in the said common gaol the body of the said A. O. until he shall pay the sum of ——— l. of lawful money of Great Britain, by us mitigated and lessened from the sum of ——— l. of like money by us the said justices adjudged against him, upon an information exhibited against him before us by A. I. gentleman, as well on behalf of his said majesty as of himself for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof; and for so doing this shall be to you or any of you a sufficient warrant and authority. Given under our hands and seals the ——— day of ——— in the year of our Lord ———.

L. Form of a summons for witnesses, upon 7 & 8 W.
c. 30. s. 24.

Westmorland. To A. W. of ———.

WHEREAS we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. of ——— in the said county, ———, did on the ——— day of ——— now last past [here set forth the offence], and that you the said A. W. are a material witness to be examined concerning the same; these are therefore to command and strictly enjoin you the said A. W. that, all and singular business and excuses being laid aside, you be and appear in your proper person before us at the house of ——— at the sign of ——— in ——— in the said county on ——— the ——— day of ——— now next ensuing, at the hour of ——— in the ——— noon of the same day, to testify the truth and what you know concerning the premises; and this you are by no means to omit, under the penalty that will thereon ensue. Given under our hands and seals, &c.

M. Form of an information against several victuallers in arrears, &c., for double duties forfeited for not paying single duties.

[Proceed as at (F.) ante, till where the offence is directed to be set forth, and then say,] *That the several and respective persons hereafter named in the first column here underwritten at several times between the — day of — and the — day of — both now last past, in the said county, that is to say at the several towns and places hereafter mentioned in the said first column hereafter written, at the respective brew-houses, and places of brewing by them the said persons severally and respectively used at the said respective time and times, place and places, and to them there severally and respectively at the said time and times belonging did severally and respectively brew the several and respective quantities of beer and ale, each above eighteen shillings the barrel, commonly called strong beer and ale, and also of beer, not above eighteen (a) shillings the barrel, commonly called small beer, hereafter respectively written against each of their respective names in the two next columns; and that they the said several persons, at and during the respective time and times of such their respective brewing the said respective quantities of beer and ale, and of every part thereof respectively, were and yet are at the said respective towns and places victuallers and tappers out and sellers of beer and ale, whereby and by virtue of several statutes in such case made there did accrue and become due to his said majesty from them respectively for and in respect of the said respective quantities of beer and ale so by them respectively brewed as aforesaid certain rates, duties, and sums of money respectively, amounting to the several sums of lawful British money hereafter expressed in the fourth column, hereafter written against each of their names respectively, which said rates, duties, and sums of money, so accrued and become due from them respectively as aforesaid, they the said several and respective persons, according to several and respective statutes in such case made, ought respectively to have paid and cleared off, to or for the use of his said majesty, within one month next after they respectively did make or ought to have made their respective entry or entries of the said beer and ale, so by them respectively brewed as aforesaid, or of any part thereof, or at any time since; but the said several and respective persons have wholly omitted and neglected to pay and clear off the same and every part thereof, contrary to the form of the said respective statutes; whereby they respectively have forfeited double*

(a) 43 G. 3. c. 81. s. 12. denominates ale and beer above 18s. the barrel, strong beer; and not above 18s. table beer.

the value of the said respective rates, duties, and sums of money by them respectively neglected and omitted to be paid as aforesaid, which said double values of the said respective duties and sums of money do amount to the several sums of money hereafter expressed, in the fifth column hereafter written; and thereupon the said A. I. who as well, &c.

1st Column.	2d Column			3d Column			4th Column			5th Column		
Names of the offenders, and the places of their abode and brewing.	Quantities of strong beer or ale above 18s. the barrel.			Quantities of small beer net above 18s. the barrel.			Sum due for the single duties.			The double value of the said duties.		
	Barrels.	Firkins.	Gallons.	Barrels.	Firkins.	Gallons.	£	s.	d.	£	s.	d.
Robert Bowness of Orton.	3	1	0	7	2	0	1	6	3	2	12	6
Thomas Home of ditto.	5	3	0	9	1	0	2	1	1	4	2	2
John Sifton of Febay.	4	1	0	7	3	0	1	11	7	3	3	2
John Noble of Langdale.	6	0	0	4	0	0	1	5	4	3	10	8

The sums to be according as the duties may be.

[N. B. Each offender must have a separate summons, judgment or conviction, warrant of distress, &c., (if necessary) which may be easily made out from the forms at letters G. H. I. K.]

N. Form of a conviction of an auctioneer for selling without a license, on 19 G. 3. c. 56. s. 4.

[P]ROCEED as in the precedent at letter (H.) ante, until where the offence is directed to be set forth, and then say,] *did exercise the business of an auctioneer, and put up to public sale by way of auction, and did then and there vend and sell by public sale by way of auction divers goods and effects, without having first taken out a license in the manner prescribed by the statute on that case made* [so proceed as in the said precedent to the examination of the witness, and then say,] *that on the ——— day of ——— he saw the said A. O. exercise the business of an auctioneer in the market-place in the time of market, in the town of ——— in the county aforesaid, and that the said A. O. was then and there putting up and offering goods to public sale by way of auction, and did then and there sell publicly several goods by way of auction and outcry to the persons then and there assembled, and who were the best and highest bidders for the same; and that he this deponent then and there became the best*
and

and highest bidder for and did accordingly buy of the said A. O. by way of auction at the said sale one lot of goods or wares consisting of ———, for which he this deponent paid unto the said A. O. the sum of ——— [or as the case may be]. And the said A. O. does not produce any evidence, &c.

O. Conviction of glass-makers, on 19 G. 2. c. 12.
f. 19. for double duties.

[PROCEED as in the precedent at letter (H.) *ante*, until where the offence is directed to be set forth, and then say,] A. O., B. O., and C. O., partners at a glass house there belonging to and used by them did make use of ——— weight of materials, or metal for making white or flint glass, and that there did accrue and become due to his said majesty from the said A. O. B. O., and C. O. for the duty of the said materials and metal made into glass as aforesaid, ———l. of good and lawful money of Great Britain; which sum so accrued or any part thereof the said A. O., B. O., and C. O. have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid or any part thereof, or at any time since, but the same yet remains wholly due and unpaid, contrary to the form of the statute, &c.; whereby they have forfeited double the value of the said duty remaining unpaid as aforesaid, that is to say, ———l. of like lawful money, and thereupon the said A. I. prays, that the said A. O., B. O., and C. O. may be convicted; [so proceed as in the said precedent to the examination of the witnesses, and then say,] that he the said A. W. being officer of excise did between the ——— day of ——— and the ——— day of ———, in the said ——— year of the reign, &c. survey the materials or metals in the glass-house of the said A. O., B. O., and C. O. in the parish of ——— in the county aforesaid, and that the said A. O., B. O., and C. O. during the said last-mentioned times did there make use of ——— weight of materials or metal in the making of white or flint glass, and that there did accrue and become due to his said majesty from the said A. O., B. O., and C. O. for the duty of the said materials and metal made into glass as aforesaid ———l. of lawful money of Great Britain; which sum so accrued, or any part thereof, the said A. O., B. O., and C. O. have not paid or cleared off to or for the use of his said majesty within six weeks next after they according to the form of the statute in that behalf made, did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at

any time since, but the same yet remains wholly due and unpaid [or as the proof may be]. And thereupon the said A. O., B. O., and C. O. being called, &c.

P. Conviction for adulterating hops, on 7 G. 2. c. 19. s. 2.

[Proceed as in the precedent at letter (H.) ante, until where the offence is to be set forth, and then say,] did mix with ——— weight of hops a certain ingredient, to wit, the vapour of sulphur and brimstone, to alter the colour of the said hops, which ingredient then and there did alter the colour of the said hops, against the form of the statute in that case made and provided; whereby and by force of the said statute the said A. O. hath for his said offence forfeited the sum of five pounds, one moiety thereof to our said lord the king, and the other to the said A. I. the said informer; and the said A. I. prays, &c. [so proceed as in the said precedent to the examination of the witness, and then say,] that on the ——— day of ——— he the said A. W. by the order of the said A. O. threw ——— pound weight of brimstone upon the fire which was then using for the purpose of drying ——— weight of hops belonging to the said A. O. in a certain hop oast, situate at ———, which brimstone was so put on the said fire for the purpose of making the said hops have a better colour; and he the said A. W. on his oath aforesaid saith that the vapour and fume of the said brimstone ascended to the hops placed over such fire, and the hops being then in a moist state such fume and vapour settled and fixed on the hops and mixed with the same, whereby the colour thereof was changed, and the hops appeared brighter than they would have appeared, if they had not been so mixed with the fume and vapour of brimstone [or as the proof may be]. And he the said A. O. being called, &c.

Execution.

WHERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. 2 *Haw. c. 51 s. 3.* & *vid. Ratcliff's case, Foster, 40, 41.*

The court may command execution to be done, without any writ. *Id. s. 4.*

In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton's* case, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution being at the king's disposal might be hung in chains, or otherwise ordered as the king should think fit. 2 *Haw. c. 48. f. 2.*

But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading, whereby the judgment is not altered, but part of it remitted. 2 *H. H. 41.*

It is clear that if a man, condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw. c. 51. f. 7.* See Indictment.

Exigent. See *Protests.*

Extortion.

[3 *E. 1. c. 26.* — 31 *El. c. 5.*]

IT is said that extortion, in a large sense, signifies any oppression under colour of right; but that in a strict sense it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. 1 *Haw. c. 68. f. 1.*

And by the statute of the 3 *Ed. 1. c. 26.* (which is only in affirmance of the common law) *No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much, and shall be punished at the king's pleasure.*

No sheriff nor other the king's officer] Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other *inferior officers* of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst. 209.*

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office to take nothing

thing for their office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.

And generally, no public officer shall take any other fees or rewards for doing any thing relating to his office than some statute in force gives him, or else as hath been anciently and accustomedly taken; and if he do otherwise, he is guilty of extortion. *Dalt. c. 41.*

But where a person was appointed collector of certain duties under stat. 43 G. 3. c. 99. by the proper constituted authorities, and considered himself and was considered by those authorities to be such collector, but whose appointment was informally made, it was decided that he could not be indicted at common law for the receipt of duties *by colour and pretence of being collector* of such duties, though the money were fraudulently collected and misapplied by him, because he was in fact appointed collector, and in that character received the money. *R. v. Dobson and another. 7 East's, Rep. 218.*

Shall take any reward] Therefore by this statute, they can at this day take no more for doing their office than hath been since allowed to them by authority of parliament. *2 Inst. 210.*

All prescriptions which have been contrary to this statute, and to the common law in affirmation of which it is made, have been always holden to be void. *1 Haw. 170.*

It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. *1 Haw. c. 68. f. 2.*

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: thus the fee of 20d. called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. *2 Inst. 210.*

But there seems to be no necessity for this distinction; for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. *1 Haw. c. 68. f. 3.*

But in the ecclesiastical court a person was libelled against for fees, and upon motion a prohibition was granted, for that

that it was holden that no court had a power to establish fees; the judge of a court may think them reasonable, but that is not binding; but if on a *quantum meruit* a jury think them reasonable, then they become established fees. 1 *Salk.* 333.

The fees, in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. *Dalt. c. 41.*

[*Shall yield twice as much*] At the common law this offence is severely punishable at the king's suit by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. 2 *Inst.* 210. 1 *Haw. c. 68. f. 5.*

And by the 31 *El. c. 5.* Actions for extortion may be laid in any county.

[*At the king's pleasure*] That is, by the king's justices, before whom the cause depends. 2 *Inst.* 210.

Indictment for extortion in a gaoler.

THE jurors for our lord the king upon their oath present, that A. O. late of ——— in the said county, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— was taken upon suspicion of having committed a certain felony by ——— constable of ——— in the said county, by virtue of a warrant directed to the said ——— under the hand and seal of Sir William Dalston, knight, then and yet one of the justices of our sovereign lord the king assigned to keep the peace in the said county, and was on the same day in the year aforesaid committed by him the said Sir William Dalston to A. G. keeper of the gaol of our said sovereign lord the king at ——— in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony aforesaid, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said A. G. being such keeper as aforesaid, in no wise regarding the statute in that case made, and the penalty therein contained, did on the ——— day of ——— at ——— aforesaid, in the said county, demand and receive ——— pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute

D d 3

aforesaid,

aforsaid, and against the peace of our said sovereign lord the king his crown and dignity.

Indictment for extortion of a bailiff.

THE jurors for our lord the king upon their oath present, that
 A. B. late of—— in the said county, yeoman, being bailiff
 of the hundred of—— in the said county, on the—— day
 of—— in the—— year of the reign of—— at——
 in the said county, by pretext and colour of his said office, did
 unjustly and by extortion take and extort 5s. of one A. I. of——
 in the said county, yeoman, one of the freeholders qualified to serve
 upon juries in the said county, to excuse the said A. I. from
 attending or appearing at the assizes that were then next to be
 holden in and for the said county, when in fact the said A. I.
 was not returned by the sheriff of the said county in any panel
 of jurors, and also when indeed no such sum of money was due
 to the said A. B. for his fee for excusing the attendance or ap-
 pearance of the said A. I. at the assizes aforsaid, to the evil
 example of other offenders, to the great damage of him the said
 A. I. and against the peace of our said lord the king, his crown
 and dignity.

False tokens. See Cheat.

Fast Days.

BY the 2 & 3 Ed. 6. c. 19. for the encouragement of the
 fisheries, and the increase of cattle, and the 5 El. c. 5.
 intituled, An act touching politic constitutions for the
 maintenance of the navy, and by the 35 El. c. 7. certain re-
 strictions were imposed with regard to eating on certain fast
 days; but these statutes have long since fallen into disuse,
 and may be deemed obsolete.

Fees. See Extortion.

Felo de se. See Homicide.

Felony, &c.

Sect. I. *Felony.*

[3]. c. 10. — 25 G. 2. c. 36. f. 11 — 27 G. 2. c. 3. — 14 G. 3. c. 20. — 18 G. 3. c. 19.]

II. *Misprifion of felony.*

III. *Theftbote.*

IV. *Rewards for apprehending felons.*

[5 An. c. 31. — 4 & 5 W. 3. c. 8. f. 3, 4. 6. — 6 & 7. W. 3. c. 17. f. 9. 12. — 10 & 11 W. c. 23. f. 2, 3, 4. — 3 G. 1. c. 15. f. 4. — 6 G. 1. c. 13. f. 8. — c. 23. f. 10. — 9 G. 1. c. 22. f. 12. — c. 23. f. 10. — c. 28. — 8 G. 2. c. 16. f. 9. — 14 G. 2. c. 6. f. 2, 3. — 15 G. 2. c. 28. f. 7, 8. 16 G. 2. c. 15. — 8 G. 3. c. 15. — 24 G. 3. c. 56. f. 5.]

I. *Felony. (a).*

FELONY is supposed by some to come from the Saxon *fel*, which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish; and the substantive of that name is used to signify a mountain rough and uncultivated. But the same word, with a little variation, runneth through most of the *European* languages, and signifieth more generally an offence at large; and the Saxon word *fallan* signifieth to offend, and *fellnissa* an offence or failure; and although *felony*, as it is now become a technical term, signifieth in a more restrained sense an offence of an high nature, yet it is not limited to *capital* offences only, but still retaineth somewhat of this larger acceptation; for *petit larceny* is felony, although it is not capital.

According to Sir Henry Spelman's observation, it signifies such an offence for which during the feudal institution a man should lose or forfeit his estate; which he derives of two northern words, *fee*, which signifies the fief, feud, beneficiary estate, and *len*, which signifies price or value.

It would swell this title near to the bigness of half the book, to set down every thing which may be comprehended

(a) Felons escaping from *England* to *Scotland*, or from *Scotland* to *England*: For the manner of apprehending them; see *Northern Borders*.

under the word *felony*; therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, *Homicide, Robbery, Burglary, Rape, Coin, Forgery*, and many others; and especially the law relating to stolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to justice from the first commission of the felony to his condemnation, and execution, is treated of under the several titles of *Hue and Cry, Arrest, Examination, Bail, Commitment, Gaol, Arraignment, Appeal, Indictment, Confession, Furors, Evidence, Clergy, Judgment, Attainder, Forfeiture, Execution*. And the course and whole procedure of trying an offender is treated of under the title *Sessions*.

The method of confining offenders to hard labour in penitentiary houses, or in vessels upon navigable rivers instead of transportation, is treated of under the title of *Transportation*.

So that there is nothing left for this place, but to take notice of one circumstance which is common to all felonies in general, and that is, concerning the charges of commitment, prosecution, conviction, or discharge.

Charges of carrying to gaol.

By the 3 *J. c. 10*. The felon shall pay the charges of his being carried to gaol, if able; to be levied by distress by warrant of one justice.

And by the 27 *G. 2. c. 3*. If he be not able, the same shall be paid by order of such justice, by the treasurer out of the county rate; and in *Middlesex* by the overseers of the poor where the party was apprehended.

Charges of prosecution.

By the 25 *G. 2. c. 36*. The court before whom any person hath been *tried and convicted* of any grand or petit larceny, or other felony, may at the prayer of the *prosecutor*, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as to the said court shall seem reasonable, not exceeding the expences he was put to in carrying on such prosecution, making him a reasonable allowance for his time and trouble; and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on being payed 1s.; and the treasurer of the county shall pay the same on sight, and be allowed the same in his account. *f. 11*.

And by the 18 *G. 3. c. 19*. The court before whom any person hath been *tried and convicted* of any grand or petit larceny, or other felony, or before whom any person hath been *tried and acquitted* of any grand or petit larceny, or other felony, in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the pro-

prosecutor had *bonâ fide* prosecuted,—may order the treasurer [of the county, riding, or division in which the offence shall have been committed] to pay to such prosecutor such sum as to them shall seem reasonable, not exceeding the expences he was *bonâ fide* at, in carrying on such prosecution, making, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize, or clerk of the peace respectively, shall forthwith make out and deliver to him, on being paid for the same 1s. and no more; and the treasurer of the county, riding, or division, upon sight of the order shall forthwith pay the same, and shall be allowed the same in his accounts. *f. 7.*

The justices in and for the county, riding, division, city, town corporate, franchise, or liberty, in quarter sessions assembled, may lay down or alter from time to time such rules and regulations, as to any costs or charges thereafter to be allowed to any person by virtue of this act; as to them shall seem reasonable; which rules and regulations, having received the approbation or signature of one or more of the judges of assize, shall be binding, and not otherwise, on all persons whatsoever. *f. 9.*

For the expences of witnesses attending in cases of felony, see title, *Evidence*, IV. vol. 1.

County, riding, or division]. These statutes, together with that of 27 G. 2. c. 3. relative to the expences of witnesses, extend to inferior districts having jurisdiction to try felons, and raising their own rates similar to the county rates. Therefore where a judge's order was made at the *Lincoln* assizes on a prosecution for a felony committed at *Stamford*, directing the treasurer of the division of *Kesteven*, within which the borough of *Stamford* is locally situated, to pay the expences to the prosecutor and his witnesses, it was holden that that order could not be enforced; it appearing that the town justices of *Stamford* have jurisdiction to try felons, that rates are made at *Stamford* similar to the county rates, and that there is a distinct treasurer for the borough. *R. v. Myers. 6 T. R. 237.*

By the 14 G. 3. c. 20. Every prisoner charged with any felony or other crime, or as accessory thereto, before any court holding criminal jurisdiction, against whom no bill of indictment shall be found by the grand jury, or who shall on trial be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large in open court, without the payment of any fee or sum of money to the sheriff, goaler, or keeper; and such fees as have been usually paid shall cease; and in lieu of such fees the

Prisoner acquitted to be discharged without fee.

the treasurers or proper officers of the county, or of such districts, hundreds, ridings, or divisions of a county as are not usually assessed to the court at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places not paying to the county rates, shall pay such sum as has been usually paid on that occasion, not exceeding 13s. 4d. for each prisoner on certificate signed by a judge or justice before whom such prisoner shall have been discharged, out of the general county rate, or public stock of such city, &c.

Felons may be charged in execution in a civil action, although their bodies are at the king's disposal. 1 *Bos. & Pull.* 271.

II. *Misprision of Felony.*

Misprision of felony (from the *French* word *mespris*, a neglect or contempt, 3 *Inst.* 36.) is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony, and more. 1 *H. H.* 374.

For it is said that every felony includes misprision of felony, and may be proceeded against as a misprision only, if the king please. 1 *Haw. c.* 59. *f.* 1.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of *Edw. 1. c.* 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 *Inst.* 140.

Misprision in a larger sense is used to signify every considerable misdemeanor, which hath not a certain name given to it in the law.

III. *Theftbote.*

Theftbote (from the *Saxon* words *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again or other amends not to prosecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. *Id.*

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were

were accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact. *Id.*

IV. *Rewards for apprehending Felons.*

Whoever shall apprehend any coiners of the current (gold or silver) coin of this realm (by stat. 6 & 7 W. 3. c. 17. §. 9.) or persons who have washed, gilded, or coloured any of the lawful silver coin called a shilling or a sixpence or any counterfeit or false shilling or sixpence with intent to make such shilling or sixpence respectively resemble or look like or pass for the pieces of lawful gold coin called a guinea, or half-guinea respectively; or shall file or any wise alter, wash, or colour any of the brass monies called halfpennies or farthings, or add to or alter the impression or any part of the impression of either side of an halfpenny or farthing with intent to make an halfpenny or farthing respectively resemble or look like or pass for a lawful shilling or sixpence respectively, or who have knowingly uttered or tendered in payment false or counterfeit money a third time after two former convictions, or uttered or tendered it in payment twice on the same day, or within ten days after the first day knowingly, or the coiners of any copper money called a halfpenny or a farthing, (by stat. 15 G. 2. c. 28. §. 7.) and shall prosecute any of such offenders to conviction, he shall receive from the sheriff of the county or city 40*l.* for every one of the former offenders, and 10*l.* for every person convicted of counterfeiting any of the said copper money, without paying any fee for the same, within one month after the conviction, and demand made by tendering a certificate to the sheriff or under-sheriff under the hands of the judge or justices before whom such conviction was, certifying such conviction, and the apprehension and prosecution by the person claiming, which certificate the said judge or justices are to give without delay or fee; and if the sheriff shall not pay the reward within the time, he shall forfeit to the prosecutor double the sum mentioned in the certificate, to be recovered in any court at *Westminster*, with treble costs; and such sheriff shall be allowed such rewards, upon his accounting without fee, 15 G. 2. c. 28. §. 7. And since by 3 G. 1. c. 15. §. 4. the treasury may allow such sum immediately before the sheriff accounts.

Rewards for apprehending coiners.

If any person, being out of prison, shall be guilty of clipping, coining, counterfeiting, washing, filing, or otherwise diminishing the coin of this realm, and afterwards discover two or more persons who have committed any of the said crimes, so as two or more of the persons discovered be convicted,

For discovering coiners.

viſted, he ſhall have the king's pardon for all crimes he has committed at any time before ſuch diſcovery made, and if he be an apprentice, he ſhall be deemed a freeman. 6 & 7 W. 3. c. 17. ſ. 12.

Apprehending
highway men.

Whoever ſhall apprehend and take one or more thieves or robbers and proſecute him till he be convicted of any robbery committed in or upon any highway (and this by ſtat. 6 G. 1. c. 13. ſ. 8. is extended to the ſtreets of *London* and *Weſtminſter* and other cities, towns, and places) paſſage, field, or open place ſhall receive from the ſheriff of the county, without paying any fee, for every ſuch offender, 40l. within one month after ſuch conviction, and demand thereof made by tendering a certificate to the ſaid ſheriff under the hand of the judge or juſtices before whom the felon ſhall be convicted; certifying the conviction for a robbery done within the county, and alſo that he was taken by the claimant, and in caſe of diſpute the ſaid judges may in their certificate appoint the ſaid rewards to be paid to the perſons apprehending in ſuch ſhares as to them ſhall ſeem juſt. If the ſheriff die or be removed before the expiration of one month after the demand, the next ſheriff ſhall pay within one month after demand made and certificate ſo brought; and if the ſheriff make default, he ſhall forfeit to the perſon to whom it is due double as much as he ought to have paid, to be recovered by action in any of the courts at *Weſtminſter*, with treble coſts. 4 & 5 W. & M. c. 8.

If any perſon be killed by ſuch robber, endeavouring to apprehend or in making purſuit after him, then the executors or adminiſtrators of ſuch perſon, or ſuch perſon to whom the right of adminiſtration ſhall belong, ſhall receive the like reward; to be paid in like manner, and under the like penalty. ſ. 3.

The ſheriff, on producing ſuch certificate and the receipt for the money, ſhall be allowed the reward, upon accounting, without fee. ſ. 4. [And now by 3 G. 1. c. 15. ſ. 4. the treaſurers are to pay theſe ſums to the ſheriff immediately.]

And, as a further reward, every perſon ſo apprehending, proſecuting, or convicting, ſhall have the horſe, furniture, and arms, money, or other goods of the robber, that ſhall be taken with him, notwithstanding any right of the crown, or of the lord of the manor, or of thoſe who lend or let the ſame to hire to ſuch robber. But this ſhall not take away the right of any perſon to ſuch horſe, &c. from whom the ſame were before feloniously taken. ſ. 6.

All certificates ſigned upon the conviction of any robber ſhall be ſigned and paid without any deduction or fee, excepting 5s. for the writing and drawing thereof; on pain of forfeiting 40l. to the perſon entitled to the certificate on the account

account of which such fee was taken, to be recovered in any court of record at *Westminster*. 6 G. 1. c. 23. s. 8.

Whoever shall apprehend a felon (robber) described by and within the time limited in the act, (and by sect. 3. the hundred is not liable if the robber be apprehended within 40 days after notice in the *Gazette*), whereby the hundred hath been actually indemnified, or discharged from any action, shall on proof thereof, on oath before two justices, have a reward of 10l. from the hundred; the same to be ascertained, levied, and paid by two justices (1 Q.) in or near the hundred, in such proportions as they think reasonable, within the hundred. 8 G. 2. c. 16. s. 9.

Whoever shall take and prosecute to conviction any person, who by night or day shall, in any shop, warehouse, coachhouse, or stable, privately and feloniously steal any goods, wares, or merchandizes of the value of 5s. (though such shop, &c. be not broke open, and though no person were therein), to be put in fear, or shall assist, hire, or command any person to commit such offence, shall have a certificate thereof *gratis* from the judge or justices, &c. certifying in what parish or place the felony was committed, and that the felon was discovered and taken, or discovered or taken by such person; and if any dispute shall arise touching the right to such certificate, the judge or justices shall direct and appoint the said certificate into so many shares to be divided amongst the persons therein concerned as to the said judge, &c. shall seem just; which certificate may be once assigned over and no more; and the original proprietor or assignee shall by virtue thereof, and of this act, be discharged from all and all manner of parish and ward offices within the parish or ward wherein such felony was committed; and the certificate shall be enrolled with the clerk of the peace on paying the fee of 1s. 10 & 11 W. 3. c. 23. s. 2. But if any person has once made use of the certificate, it shall not be assigned over to any other person. s. 3.

Privately stealing in shops, &c.

If any person shall be slain in endeavouring to apprehend such felon, the executors or administrators of such person, or those to whom the right of administering to the personal estate belongs, shall have the like certificate, without fee. 10 & 11 W. 3. c. 23. s. 4.

Every person who shall take any person guilty of burglary, or the felonious breaking and entering of any house in the day time, and prosecute them to conviction, shall receive (without deduction by 6 G. 1. c. 23. s. 10.) over and above the reward given by stat. 10 & 11 W. 3. c. 23. (namely the certificate; see above) 40l. within one month after conviction; and the same regulations are established respecting

Burglars and house breakers.

specting this as are provided by the stat. 4 & 5 *W. & M. c. 8.* (*vide Sup.*) concerning the reward of 40*l.* to be paid on the conviction of highwaymen. 5 *An. c. 31.* [The sheriff is to be repaid by the treasury before accounting. 3 *G. 1. c. 15. s. 4.*]

And if any person, being out of prison, shall commit any burglary or felony as aforesaid, (housebreaking in the day time), and afterwards discover two or more such offenders, so as two or more be convicted, (such discoverer shall have the like reward of 40*l.* and all other advantages promised to such prosecutor, and also the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery. *s. 4.*

Offender under
the Black Act.

If any person shall apprehend, or cause to be convicted, any person offending against that act (the Black Act, 9 *G. 1. c. 22.*) and shall be killed or wounded so as to lose an eye, or the use of any limb in apprehending, or securing, or endeavouring to apprehend or secure, such offender, upon proof made at the general quarter sessions, where the offence shall be committed, or the party killed or wound received by the person so apprehending, and causing the conviction, or the person so wounded, or the executor or administrator of the party killed, the justices at sessions shall give a certificate thereof to such persons, or executors, or administrators; by which certificate they shall be entitled to receive of the sheriff 50*l.*; which sum shall be allowed to the sheriff on passing his accounts in the exchequer; if the sheriff do not pay the money within 30 days after the certificate is shewn to him, he shall forfeit 10*l.*; for which said sum of 10*l.* as well as that of 50*l.* such person may recover from the sheriff in an action for money had and received to his use. *s. 12.*

Sheep stealers.

Every person, who shall apprehend and prosecute to conviction any person who shall steal or wilfully kill with a felonious intent to steal the carcase, or any part of the carcase, one or more sheep (or bull, cow, ox, steer, bullock, heifer, calf, or lamb, by 15 *G. 2. c. 34.*), or persons assisting or aiding therein, shall have within a month a reward of 10*l.* from the sheriffs, on producing a certificate &c. from the judge; the judge may apportion the reward among several claimants; if the sheriff do not pay in a month, he forfeits double the amount, with treble costs, &c. 14 *G. 2. c. 6. s. 2, 3.*

Convicts.

Whoever shall discover, apprehend, and prosecute to conviction any felon or other offender ordered for transportation, or who has agreed to transport himself, and who shall be afterwards at large in *Great Britain*, without some lawful excuse before the expiration of the term, shall be entitled

entitled to a reward of 20l. for every such offender; and shall have the like certificate as those who prosecute highwaymen to conviction. 16 G. 2. c. 15. 8 G. 3. c. 15. 24 G. 3. c. 56. s. 5.

Whoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any person for taking money or other reward to help persons to their stolen goods, (such offender not having apprehended the felon who stole the same, and brought him to trial, and given evidence against him), shall be entitled to a reward of 40l. for every offender so convicted; and shall have the like certificate and payment as persons who apprehend, &c. highwaymen. (*vid. sup.*) 6 G. 1. c. 23.

Whoever shall prosecute to conviction any persons opposing the execution of process in a place called *Suffolk Place*, or the *Mint* in *Surry*, shall be entitled to a reward of 40l. for every offender, &c. as in the case of robberies, &c. 9 G. 1. c. 28.

[*Parish and ward offices within the parish or ward*] In the case of *R. v. Derbyshire*, T. 1 G. 3. the defendant was indicted at the sessions for refusing to take upon him the office of constable for the manor of *Birmingham*. The indictment having been removed by *certiorari*, the cause was tried at *Warwick* assizes, and the jury found specially that the defendant was a fit person in all respects to be nominated and elected to the office, unless discharged or exempt therefrom by reason of a certificate he had under this act. It appeared that the usage at *Birmingham* had been, annually at the court-leet there, for the jury to elect two constables for the manor of *Birmingham* generally, and one constable for the hamlet of *Deritend* (a distinct vill within the said manor) particularly; that the manor of *Birmingham* extends into and comprehends the whole town and parish of *Birmingham*, and also the said hamlet of *Deritend*; that the constables so elected for the said manor of *Birmingham* generally have jurisdiction and authority, as constables, not only throughout the town and parish of *Birmingham*, but also within and throughout the hamlet of *Deritend*; that the constable of *Deritend* is elected out of the inhabitants of *Deritend* only; and the constable so elected for *Deritend* particularly, and the constables so elected for the manor of *Birmingham*, have severally equal and concurrent jurisdiction within the hamlet of *Deritend*. The question reserved for the opinion of the court was, whether the defendant notwithstanding the certificate, were liable to serve the said office? *By the Court*.—The only question is whether the constable of the manor of *Birmingham* be a parish officer of the parish of *Birmingham*? This term parish.

parish officer doth not include every office exercised in the parish; if it did, it might even take in the office of high sheriff of the county. A parish officer is relative to the parish, &c. confined to the parish only. A constable of a parish may be called a parish officer; but this man hath a much larger jurisdiction than the parish only; for he hath the jurisdiction over the whole manor, which extends much beyond the parish; and the parish is only a part of that district, over which it is to be exercised. And the act doth not intend the certificate to be a discharge from an office whereof the functions are to be exercised out of the limits of the parish. This man cannot be esteemed a parish officer, either from the origin of his office, or from the nature or from the exercise of it. Mr. *J. Denison* added, if it had been stated that the manor of *Birmingham* and parish of *Birmingham* were co-extensive, this certificate might have been a sufficient discharge. 2 Burr. 1182.

This question afterwards arose in the case of *Moseley Bart. v. Stonehouse*, Hil. 46 G. 3. B. R., where the party was appointed to the office of a petty constable for a smaller district than the parish. He was elected at a court-leet of the manor of *Manchester*, constable for the township of *Manchester*, which forms together with other townships the parish of *Manchester*; and the parish of *Manchester*, and the manor of *Manchester* are co-extensive; the certificate was granted for the parish of *Manchester*, within which was this particular township. The Court, after argument, decided that the party was exempted from serving the office of petty constable, which was to be exercised wholly within the parish; and that the words of the statute "discharged from all and all manner of parish and ward offices within the parish or ward," ought to be taken in their popular sense. 7 East's Rep. 174.

R. v. Davies, E. 29 G. 2. Motion to quash a conviction and the affirmance of it on appeal removed into the King's Bench by *certiorari*; upon this case. The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 G. 2. to be collector of the parish rates for the repair of the roads within the parish of *St. Leonard's Shoreditch*, and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash those proceedings as illegal. After argument on shewing cause:—By *Ryder Ch. J.* The question is, whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party and his assignee from all parish and ward offices.

Here are two questions: First, whether this be a parish office? Secondly, whether it be within this act? And though the latter may seem to be a consequence of the former, yet it may be necessary to consider whether this is the old office of surveyor, or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business; and the officer must be a parishioner: Both which ingredients are here. It may be a question of nicety whether this act extends to new offices; though I give no opinion as to this point. The office is not co-extensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed that the 22 G. 2. meant to take away any privilege which the party had before. Therefore as I do not think this a new office, I think the conviction and assurance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 W. — *Dennison J.* The question is, whether the collector of the parish rates in the parish within the 22 G. 2. is a parish officer within the benefit of the certificate under the 10 & 11 W.? I think the act of 10 & 11 W. ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer as the surveyor appointed under this act of parliament. A covenant to pay taxes extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not confine it to offices in being. It was intended as a reward. Therefore the new modelling an old office shall have the same benefit and constructions as the old office itself would be entitled to. — *Foster J.* This must certainly be taken to be a parish officer; for the duty is confined to the parish, and to be executed by an inhabitant. I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an entirely new created office; and yet if a parish office, I should think it within the 10 & 11 W. Clergymen, at common law, are exempted from all offices; and therefore would be exempted from the new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices as well as old ones. — *Wilmot J.* The words of the act of 10 & 11 W. are as general as can be. Nothing can more contribute to the public safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion;

but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, though not named by the parish. Nothing can be clearer than that this is part of the old office of surveyor. Therefore the conviction and affirmance thereof were quashed. MSS. (by Mr. Durnford.)

Information against a person for felony.

Westmorland. *THE information and complaint of A. I. of ——— in the county of ——— yeoman, made on oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year ——— that yesterday in the night or early in the morning of this day divers goods of him the said A. I. to wit, ——— have feloniously been stolen, taken, and carried away from the house of him the said A. I. at ——— aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that A. O. late of ——— yeoman feloniously did steal, take, and carry away the same: [Or otherwise as the case shall be:] And thereupon he the said A. I. prayeth that justice may be done to the premises.*

Before me

A. I.

J. P.

Warrant for felony.

Westmorland. To the constable of ———.

FORASMUCH as A. I. of ——— in the county of ——— yeoman hath this day made information and complaint upon oath before me ——— one of his majesty's justices of the peace for the said county that this present day divers goods of him the said A. I. to wit, ——— have feloniously been stolen, taken, and carried away from the house of him the said A. I. at ——— aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that A. O. late of ——— yeoman, feloniously did steal, take, and carry away the same: [Or otherwise as the case shall be:] These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me to answer unto the said information and complaint, and to be further

ther dealt withal according to law. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year ———.

The form of a commitment for felony; see *Commitment*.

The form of a search warrant for stolen goods; see *Search Warrant*.

The forms of indictments for stolen goods of various kinds are inserted under the title *Larceny*.

Feme covert. See *Wife*.

Fern: Burning of it in forests. See *Burning*.

Fire. See *Burning*.

Fireworks.

IT shall not be lawful for any person (of what age, sex, degree, or quality soever) to make or cause to be made or to sell or expose to sale any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; or to permit the same to be cast, thrown, or fired from out of or in his house, lodging, or habitation, or other place thereto belonging, into any public street, highway, road, or passage; or to throw, cast, or fire, or be aiding in throwing, casting, or firing the same in or into any public street, house, shop, river, highway, road, or passage; and every such offence shall be adjudged a common nuisance. 9 & 10 W. c. 7. s. 1.

Fireworks a nuisance.

If any person shall make or cause to be made, or give, sell, or offer to sale any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; he shall on conviction before one justice, or chief magistrate, by confession or oath of two witnesses forfeit 5l. half to the poor, and half to the prosecutor, to be levied by distress, by warrant of such justice or chief magistrate. s. 2.

Making and selling rockets.

And if any person shall permit any the same to be cast, thrown, or fired from, out of, or in his house, shop, dwelling, lodging, habitation, or other place thereto belonging, into any public street, highway, road, or passage, or any other house or place; he shall forfeit 20s. in like manner. *Id.*

Suffering rockets to be fired.

If any person shall throw, cast, or fire, or be aiding in throwing, casting, or firing any the same into any public street, house, shop, river, highway, road, or passage, he shall

Firing rockets.

forfeit 20s. in like manner; and if he shall not immediately on conviction pay to the justice the said forfeiture for the uses aforesaid, the latter shall commit him to the house of correction, to be kept to hard labour for any time not exceeding one month, unless he shall sooner pay the forfeiture. *s. 3.*

Where a squib was wantonly thrown among the stands at a fair, and being removed from off that on which it alighted, it occasioned the loss of the eye of a bystander, it was holden by *De Grey, C. J. and Nares and Gould, Js.* against *Blackstone J.* that all that was done subsequent to the original throwing was a continuation of the first force, and first act, which continued till the squib was spent by bursting; and that trespass, not an action on the case, was the proper remedy. 1 *Black. R.* 892.

Fish and fisheries.

THERE are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles; *viz.*

(1) An act for the preservation of fish in the river of *Severn.* 30 *C. 2. c. 9.*

(2) An act for the increase and better preservation of salmon and other fish in the rivers within the counties of *Southampton and Wilts.* 4 *An. c. 21.* In which some alterations are made by the 1 *G. 3. c. 18.*

(3) An act for the better preservation and improvement of the fishery within the river of *Thames*, and for regulating and governing the company of fishermen of the said river. 9 *An. c. 26.*

(4) An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of *Thames* and waters of *Medway*; and for the better regulating the fishery thereof. 30 *G. 2. c. 21.*

(5) An act for the better preservation of fish, and regulating the fisheries, in the rivers *Severn* and *Verniew.* 18 *G. 3. c. 33.*

What follows seems best reducible under these heads;

I. The penalty of fishing in ponds and other private fisheries.

[3 *Ed. 1. c. 20.* — 5 *El. c. 21. f. 2. 6.* — 22 & 23 *C. 2. c. 25. f. 8, 9.* — 4 & 5 *W. c. 23. f. 5, 6.* — 5 *G. 3. c. 14. f. 1—4.*]

II. Rules concerning the size, and preserving the breed of fish.

[13 Ed. 1. lt. 1. c. 47. — 13 R. 2. ft. 1. c. 19. — 17 R. 2. c. 9. — 2 H. 6. c. 15. — 1 El. c. 17. — 1 G. ft. 2. c. 18. f. 14, 15. 17. — 33 G. 2. c. 27. — 43 G. 3. c. 61. — 45 G. 3. c. 33.]

III. Of the herring and other fisheries.

[28 G. 2. c. 14. f. 9. — 25 G. 3. c. 81. f. 17—19. 43—52. — 48 G. 3. c. 110. — 50 G. 3. c. 54.]

IV. Of the oyster fisheries.

[31 G. 3. c. 51. — 48 G. 3. c. 144.]

V. Rules concerning fishing in or near the sea.

[3 J. c. 12. f. 2. — 1 G. ft. 2. c. 18. — 9 G. c. 33. f. 4. — 33 G. 2. c. 27. f. 11. — 26 G. 3. c. 41. f. 1. — 42 G. 3. c. 22. f. 4.]

VI. Importing fish.

[18 C. 2. c. 2. — 1 G. ft. 2. c. 18. — 9 G. 2. c. 33.]

I. The penalty of fishing in ponds and other private fisheries.

Any man may erect a fish pond without license; because it is a matter of profit, and for the increase of victuals. Erecting a fish pond.
2 *Inst.* 199.

If any trespassers in ponds be thereof attained at the suit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years' imprisonment, and after shall make fine at the king's pleasure, (if they have whereof,) and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years' imprisonment they shall find like surety; and if they cannot find like surety they shall abjure the realm. And if none sue within the year and day, the king shall have the suit. 3 *Ed.* 1. c. 20. Trespassing in ponds.

Note; Those are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* 200.

The 9 G. c. 22. commonly called the Black Act, has in a great degree superseded 37 H. 8. c. 4. f. 4. which latter statute rendered the party maliciously cutting heads or dams of ponds, &c. or other several waters, or heads or pipes of conduits, liable to treble damages in an action of trespass and a fine to the king of 10l. Cutting ponds, dams, and heads of conduits.

By 5 *El.* c. 21. f. 2. 6. If any person shall at any time by day or night unlawfully break, cut down, cut out, or destroy any head or dam of any ponds, pools, moats, stagnes, stewes, Breaking the dams, or fishing ponds.
See Br. 2c 208 He
or *ca 20 Sec 15*

or several pits wherein fish shall be, or shall wrongfully fish therein, with intent to destroy, kill, take, or steal any of the same fish against the will of the owners or possessors of the same fish; he shall on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages to the party grieved; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth during the said seven years.

Persons stealing
fish out of ponds,
or waters, to
make recom-
pence to the
owner thereof;

Whereas divers idle, disorderly, and mean persons betake themselves to the stealing, taking, and killing of fish out of ponds, pools, moats, stews, and other several waters and rivers, to the great damage of the owners thereof; it is enacted that if any person shall use any net whatsoever, or any angle, hair, noose, troll, or spear; or shall lay any wears, pots, nets, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, moat, or other water as aforesaid, *without the consent of the lord or owner of the water*, and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking, or killing fish shall for every such offence give to the party injured such recompence for his damages, and in such time as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor such sum, not exceeding 10s., as the justice shall think meet: In default of payment, to be levied by distress and sale, rendering the overplus, if any; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10l. never to offend in like manner. 22 & 23 G. 2. c. 25. s. 7.

and also pay 10s.

Without the consent of the lord or owner of the water] *M.* 32 G. 2. *R. v. Mallinson*. A conviction for taking and killing fish, not setting forth (amongst other particulars) that the defender had not the license or consent of the owner, was adjudged to be bad. For by the court; The offence provided against by the act is *stealing* fish, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with stealing, nor even with taking and killing the fish of another person, or in another person's pond. It may be his own pond and his own fish, for any thing that is stated to the contrary. And the conviction was quashed. 2 Burr. 679.

Persons

Persons aggrieved may appeal to the next sessions, whose determination therein shall be final, if no title to any land, royalty, or fishery be therein concerned. 22 & 23 C. 2. c. 25. §. 9. Appeal.

Every justice before whom such offender shall be convicted may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets, or other engines, wherewith such offender shall be apprehended. §. 8. Engines may be seized and destroyed.

Whereas divers idle, disorderly, and mean persons have and keep nets, angles, leaps, pitches, and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof; therefore no person shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, for their better conveniency in the sale of the same, and other than the owner and occupier of any river or fishery; and except fishermen and their apprentices lawfully authorized to fish in navigable rivers or waters; and the owner or occupier of any river or fishery, and every other person by him for that purpose appointed, may seize, detain, and keep to his own use every net, angle, leap, piche, and other engine, which he shall find used or laid or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time search the houses, out-houses, or other places of any person hereby prohibited to have or keep the same, as shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut in pieces or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W. c. 23. §. 5, 6.

If any person shall enter into any park or paddock fenced in and inclosed, or into any garden, orchard, or yard adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy any fish bred, kept, or preserved therein, without the consent of the owner thereof; or shall be aiding or assisting therein; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and being thereof indicted at the assizes, within six calendar months after the offence committed, shall on such indictment be by verdict or confession convicted of any such offence, he shall be transported for seven years. And any offender, surrendering himself to a justice in the county, or being ap- Entering any park inclosed, or garden, &c. to destroy fish, transportation.

prehended, or in custody for such offence or on any other account, and who shall voluntarily make confession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended, and shall on trial give evidence sufficient to convict such accomplice, shall be pardoned, acquitted, and discharged of the offence so by him confessed. 5 G. 3. c. 14. s. 1, 2.

Taking fish in other inclosed grounds, being private property.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or stream, pond, pool, or other water, (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-house, but in any other inclosed ground being private property); he shall, on conviction before one justice, on the oath of one witness, forfeit for every such offence 5l. to the owner or owners of the fishery of such river or stream of water, or of such pond, pool, moat, or other water: And any one justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other justice, of the county or place, by the oath of one witness, or his own confession, he shall immediately after conviction pay the said penalty of 5l. to such justice, for the use of such person as the same is hereby appointed to be forfeited and paid unto; and in default thereof, shall be committed by such justice to the house of correction for any time not exceeding six months, unless the forfeiture shall be sooner paid: Or such owner of the fishery may bring an action for the penalty (within six calendar months after the offence), in any of the courts of record at *Westminster*. s. 3, 4.

Exception.

Provided, that nothing in this act shall extend to subject any persons to the penalties thereof, who shall fish, take, or kill and carry away any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away any such fish. s. 5.

On conviction it must appear that such fishing in private property was without consent of the owner.

In the case of *R. v. Corden*, H. 9 G. 3. The conviction was, that on such a day, at such a place, *Martha Buxton* of the parish of *Ashborne*, in the county of *Derby*, spinster, cometh in her proper person before me *R. B.* (the justice), and upon her corporal oath giveth me the said justice to understand and be informed that *Uriah Corden* of *Clifton*, in the parish of *Ashborne*, in the said county, gentleman, on the 18th of *June* last past, in the parish of *Ashborne* aforesaid, did fish with a net in a brook or stream called the *Schoo Brook*, in that part of the said brook which runneth between the manor of *Clifton* and the manor of *Uffcoat* and *Underwoode*, in the said county; and did then and there take, kill, and destroy several fish, against the form of the statute in such case made and

pro-

provided; he the said *Uriah Corden* not having any just right or claim to take, kill, or carry away any such fish; and the said part of the said brook or stream, wherein and whereupon the said fish were so taken, killed, and carried away, not being in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-house, but in other inclosed ground then and there being private property. And further, on the same day and year aforesaid, and at the place aforesaid, cometh one *John Chatterton* of *Ashborne* aforesaid, gentleman, and giveth me the said justice to understand that *Richard Hayne* of *Ashborne* aforesaid, Esquire, is the true and lawful owner of the fishery of the aforesaid part of the said brook called *Schoo Brook*, which runneth between the manor of *Clifton* and the manor of *Uffcoat* and *Underwood* in the county aforesaid. And thereupon the said *Martha Buxton* the informant aforesaid prays that the said *Uriah Corden* may be convicted of the offence aforesaid, according to the form of the statute in such case made and provided. Whereupon, afterwards, to wit, upon the 16th day of *July* the year aforesaid, in the county aforesaid, he the said *Uriah Corden* being by virtue of my warrant brought before me the justice aforesaid, at *Ashborne* aforesaid, to answer the said charge contained in the said information, and having heard the same, he the said *Uriah Corden* is asked by me the said justice, 'if he can say any thing for himself, why he should not be convicted of the premises above charged upon him in the form aforesaid?' And because he the said *Uriah Corden* doth not nor can say any thing in his own defence touching and concerning the premises aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premises to be true, in manner and form as the same are charged upon him in the said information; and because all and singular the premises being heard and fully understood by me the said justice, it manifestly appears to me that he the said *Uriah Corden* is guilty of the above-mentioned offence so laid to his charge; it is therefore adjudged by me the said justice, that the said *Uriah Corden* is guilty of the aforesaid offence; and that he be and is hereby convicted by me the justice aforesaid of the premises aforesaid, according to the form of the statute aforesaid; and I the justice aforesaid do award and adjudge that for the premises aforesaid he hath forfeited the sum of 5*l.* of lawful money of *Great Britain* to be paid as the statute aforesaid doth direct. Two exceptions were taken to this conviction. First, It doth not appear that this conviction was made upon the complaint of the owner, or by authority from the owner; or even that this was a fishing with-

out the consent of the owner. Whereas it appears clearly, upon considering the whole act of parliament, and comparing one part of it with another, that the complaint of the owner is essentially necessary to give jurisdiction to the justice. Secondly, Here is no proof upon oath that Mr. *Hayne* was the owner, or who else was so. *John Chatterton's* information is not upon oath: and it is confined to the time of giving it; but says nothing about who was owner at the time of the fishing.—Unto these exceptions it was answered; First, There are no expressions in the act which require the complaint to the justice to be made by the owner. The words are general. The jurisdiction is given to the justice, upon complaint made to him upon oath. Secondly, The defendant has confessed the whole charge; and part of it is, that Mr. *Hayne* was the owner.—The court were of opinion that this conviction was bad. They thought that a strict hand ought to be holden over these summary convictions, and it ought to appear to the court that the justice hath jurisdiction: which in this case doth not appear. Here is no complaint from the owner; nor doth it even appear to have been without his consent. It ought at least to appear that it was without his consent. This is plainly implied in the act of parliament: The giving the penalty to the owner shews it. Here it doth not sufficiently appear that this was private property; or who was the owner. The witness who gave the justice to understand “that Mr. *Hayne* is the owner,” was not upon oath; and was therefore no witness. The ownership is not sufficiently charged: Neither is it confessed. The confession goes no farther than the matter charged. The words in the conviction, “not having any just right or claim to take, kill, or carry away any such fish,” are the words and opinions of *Martha Buxton*; not of the justice who made the conviction: And they are too general. The proviso from whence they are taken means to except such persons as have a special right to fish in the fishery of another. The offence intended in this conviction is, fishing in the fishery of Mr. *Hayne*, being private property. But all this might be done, for any thing that appears upon this conviction, with the consent of the owner. The fact ought to appear so that the court may be able to judge whether the conviction be agreeable to law. If the owner had been the complainer, that would have shewn his dissent: But this conviction is upon the complaint of *Martha Buxton*; and it doth not appear that the defendant hath been guilty of fishing in any water being private property, without consent of the owner.—And the conviction was quashed. *Burr.* 2279.

An indictment against *John Hunsdon* on 5 G. 3. c. 14. charged him with unlawfully entering a garden of A. T. adjoining and belonging to her dwelling-house in which was a certain pond used for keeping fish, and without A. T.'s consent, with a certain net stealing, and taking out of the said pond a certain quantity of live gold and silver fish of the goods and chattels of the said A. T. against the form of the statute. On evidence, it appeared that the pond out of which the fish were taken adjoined to the house and was about 20 yards in length and 10 in breadth; that gold fish and other fish were kept in it, which were usually fished for with a hook and line. It was objected, that fish in an open pond were *fera natura*, unreclaimed, and not the property of any particular person, as they were laid to be in the indictment. In answer to which a distinction was taken in the part of the crown, that this was not an indictment for a felony, but only for a misdemeanour on the statute which it is to be observed, uses the word *steal*], though the punishment directed was transportation. In *Easter term* 1781, all the judges held the indictment good, the case being fully brought within the 5 G. 3., without the allegation that the fish were the goods and chattels of any person, and therefore that part of the indictment was surplusage. But if the indictment had been at common law for felony, it was the opinion of some that it should have described what sort of a pond it was, that it might appear on the face of the indictment that taking fish out of such a pond was felony. O. B. 1781. 2 *East's P. C.* c. 16.

The fish need not be stated to be the goods, &c. of the owner.

43.

By the Black act before mentioned, (9 G. 1. c. 22.) if any person being armed with any offensive weapon, and having his face blacked or otherwise disguised, shall unlawfully steal or take away any fish out of any river or pond, or shall unlawfully and maliciously break down the head or mound of any fish pond whereby the fish shall be lost or destroyed, or shall forcibly rescue any person lawfully in custody for such offence, or by gift or promise of money or other reward, procure any other of his majesty's subjects to join with him therein; he shall be guilty of felony without benefit of clergy.

Felony by the Black Act.

Thomas Ross was indicted on 9 G. c. 22. for unlawfully, maliciously, and feloniously breaking down the head and mound of two fish ponds in a place called *Bosworth Park*, belonging to Sir *Wolston Dixie*, bart. "whereby the fish therein were lost and destroyed." It was proved that part of the head or mound of one of the ponds had been cut down to a considerable depth by two persons, of whom the prisoner was one, so as to leave but little

water

water in the pond, and that the fish were gone. But it appeared to have been the object of the offenders to *steal* the fish, and not to let them escape through the breach in the mound, for the weeds were much trodden down in the pond, manifestly in searching for fish; and the two persons had been seen with sacks, which there was evidence sufficient to prove were filled with fish, and there was no evidence to shew that any of the fish had escaped through the cut, or that it was the occasion of their loss or destruction any otherwise than by rendering it more easy to take them when the greatest part of the water was let off. *Chambre, B.* at the first was inclined to think that though the prisoner might have been indicted for a misdemeanor under 5 G. 3. c. 14., the case proved did not support the indictment for the felony, conceiving that the 9 G. c. 22. was meant to apply only to cases of malicious mischief, and when the breaking of the mound was the immediate cause of the loss and destruction of the fish, and not merely auxiliary to the destruction of them by other means: but not recollecting any case upon the construction of this clause, he left the evidence of the facts to the jury, who found the prisoner guilty, and he respited judgment in order to take the opinion of the judges upon the question of law. In *T. T.* 1800 the judges, on conference, held the conviction wrong, as the clause against breaking the heads, &c. of ponds does not extend to cases where the object of the party was to steal the fish; which is guarded against by another clause; and that event if the offence proved had been originally within the Black Act, it was virtually taken out of it by the subsequent statute of 5 G. 3. c. 14. *Leicester, Spr. Ass.* 1800. 2 *East's P. C.* c. 22. s. 12.

Perhaps, (observes Mr. *East*,) the 5 *Eliz.*, which was not adverted to upon that occasion, may also be thought to meet the case so far as concerns the act of cutting the dam with intent to steal the fish.

Sect. II. Rules concerning the assize, and preserving the breed of fish.

Salmon.

1. If any person shall lay or draw any net, engine, or other device, or wilfully do or cause any thing to be done in the *Severn, Dee, Wyne, Teame, Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swale, Calder, Wharf, Eure, Darwent, or Trent*, whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches or more from the eye to the extent of the middle of the tail, shall be taken and killed, or destroyed; or shall make, erect, or set any bank, dam, hedge, or flank, or net, cross the same, whereby the

the salmon therein may be taken, or hindered from passing up to spawn; or shall between *July 31.* and *Nov. 12.* (except in the *Ribble*, where they may be taken between *Jan. 1.* and *Sept. 15.*) take, kill, destroy, or wilfully hurt any salmon of any kind or size in any of the said rivers; or shall after *Nov. 12.* yearly fish there for salmon with any net less than $2\frac{1}{2}$ inches in the mesh; he shall on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5*l.* and the fish so taken, and the nets, engines, and devices used in doing the same; half the said sum to the informer, and half to the poor; to be levied by distress, rendering the overplus; for want of distress, to be committed to the house of correction, or other county gaol or prison, not more than three months, nor less than one, there to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit: The said justice shall order the nets, engines, and devices to be cut or destroyed in his presence, and shall cause the banks, dams, hedges, or stanks, to be demolished and removed at the charge of the offender, to be levied in like manner. 1 *G. 2. c. 18. f. 14.*

Note; It is not said who shall have the fish; so that it seemeth that they are forfeited to the king.

And no salmon shall be sent to fishmongers or their agents to *London*, under six pounds weight; on pain that the sender, buyer, or seller on the like conviction, shall forfeit 5*l.* and the fish; half the penalty and fish to the informer, and half to the poor; the said sum to be levied by distress; for want of sufficient distress, to be committed to the house of correction, or other county gaol or prison, there to be kept to hard labour for three months, if not paid in the mean time. *Id. f. 15.*

And persons aggrieved may appeal to the next sessions. *Id. f. 17.*

2. No salmon shall be taken in the *Humber, Ouse, Trent, Done, Aire, Darwent, Wharfe, Nid, Yore, Swale, Tese, Tine, Eden*, or any other water wherein salmon are taken, between *Sept. 8.* and *Nov. 11.* Nor shall any young salmon be taken at mill-pools (nor in other places, 13 *R. 2. f. 1. c. 19.*) from *Midapril* or *Midsummer*; on pain of having the nets and engines burnt for the first offence; for the second, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. 13 *Ed. 1. f. 1. c. 47.* That is, under the great seal, and by authority of parliament. 2 *Ins. 477.*

Salmon spawn and smelts.

Whereas the periods limited by the said acts of 13 *E. 1.* & 13 *Rich. 2.* are not suited to the fisheries for salmon, But with respect to the rivers *Teign, Dart, and Plym.* salmon

Power for legal owners, &c. to take salmon, &c. with legal nets at certain times.

salmon peal, or salmon kind, or bouges, otherwise sea trout, or to the protection of the spawn or fry of salmon in the rivers commonly called the *Teign*, *Dart*, or *Plym*, in the county of *Devon*, and have been found very prejudicial to the owners and proprietors of the fisheries in such rivers, and to the public; and whereas it is necessary that provision should be made for the better preservation of salmon, and the spawn, fry, or young brood of salmon, salmon peal, salmon kind, and bouges or sea trout, in the said rivers *Teign*, *Dart*, and *Plym*, and in the several rivulets or streams of water communicating therewith, it is enacted that it shall be lawful for the respective owners and proprietors, and persons legally entitled to fish in the said rivers or waters called the *Dart*, *Teign*, and *Plym*, in the said county or in any of the streams of water or rivulets communicating therewith, and their respective servants and agents, at any time in the year between the 4th of *March* and the 4th of *December*, within the *Teign*, and the several rivulets or streams communicating therewith, with legal and proper nets, or hooks and lines, to take, kill, or destroy any salmon, salmon peal, or salmon kind, and to offer to sale any such fish so taken between the said periods within the *Teign* and the several rivulets or streams communicating therewith; and also at any time between the 15th of *February* and the 15th of *November* within the said rivers *Dart* and *Plym*, and the several rivulets or streams communicating therewith, with legal and proper nets, &c. to take, &c. any such salmon, &c. within the said *Dart* and *Plym*, and the several rivulets or streams communicating therewith, and to offer the same to sale when so taken between the said last-mentioned periods, within the said last-mentioned river and waters; and that all such fish shall be considered to be in season, and proper to be killed. 43 G.3. c. 61. s. 1.

For restraining persons taking salmon, &c. or pursuing or injuring the same.

Provided that no such owner or other person, nor any of his servants or agents, nor any other person, shall at any time within the *Teign*, or any of the waters communicating therewith on or between the 4th of *Dec.* 1803, and the 4th of *March* 1804, or at any time or times in any subsequent year on or between the 4th of *Dec.* and the 4th of *March* following; and that no such proprietor or other person, nor any of his servants or agents, nor any other person, shall at any time within the said rivers *Dart* and *Plym*, or either of them, or any of the waters communicating therewith respectively, on or between the 15th of *Nov.* 1803, and the 15th of *Feb.* 1804, or at any time or times in any subsequent year on or between the 15th of *Nov.* and the 15th of *Feb.* following, take, kill, or destroy, pursue, hurt, or injure, or attempt, or endeavour, or seek to

to take, kill, or destroy, or to pursue, hurt, or injure any salmon, salmon peal, or salmon kind, or any of the spawn, brood, or fry of salmon, or any kepper or shedder salmon, by any means whatsoever; nor shall any person offer to sale, or dispose of any of the said fish so taken in the said rivers and waters within the periods last aforesaid; and that no person shall at any time hereafter, either within such periods or otherwise within any or either of the said several rivers or waters communicating therewith, pursue, take, kill, or destroy, or seek, or endeavour to take, kill, or destroy, pursue, hurt, or injure any of such fish by means of any engine commonly called a spear, or with any other engine or device of that nature: nor shall any person offer any of such fish for sale if the same shall be so taken as aforesaid. *s. 2.*

No bouges otherwise called sea trout shall be taken within the said rivers, or any of the waters communicating therewith, between the 29th of *Sept.* and the 2d of *Feb.* following in any year; and that none of the fish herein-before mentioned of whatever kind shall at any time be pursued, taken, killed, or destroyed, or attempted so to be, or to be otherwise hurt or injured, within any of the said rivers, or the said waters on a *Sunday*. *s. 3.*

And after the passing of this act, every person who shall pursue, take, kill, or destroy, or endeavour or attempt to pursue, take, kill, or destroy, or be aiding or assisting in the pursuing, taking, killing, or destroying any salmon or other such fish as aforesaid, or spawn, brood, or fry aforesaid, in any or either of the said rivers, or within any of the several waters communicating therewith, or with either of them; or shall sell or expose to sale any such salmon, or other such fish taken contrary to this act, or between the periods before specified in relation to any such fish as aforesaid, and who shall be thereof convicted before any justice for the said county, either upon view or by confession, or by the oath of one witness, or any such owner or proprietor, or other such person legally entitled to fish as aforesaid, or of his agents or servants, shall for the first offence forfeit any sum to be ascertained by such justice not less than 40s. nor more than 5l. together with such fish and all the nets, and other instruments used or kept for the purpose of committing any such offence, and for the second offence shall forfeit not less than 40s. nor more than 10l., to be ascertained as aforesaid, together with all such fish nets and other instruments as aforesaid; one half of such penalty to go to the informer, and the other half to the poor of the parish or parishes where the offence was committed; such penalty to be levied by distress by warrant of such justice or justices, returning the overplus, &c.,

and

Sea trout not to be taken but at certain seasons, &c.

Penalties on persons selling salmon or offering the same for sale.

and for want of such distress, or of payment of such penalty on demand, then such offender shall for every such offence be sent to the house of correction of the county where taken, to be kept to hard labour not exceeding six calendar months, nor less than two calendar months; and the said justice or justices shall order such nets, &c. to be seized and immediately cut in pieces or otherwise destroyed or disposed of in his or their presence, as he or they think proper. *f. 4.*

Allowing an
appeal.

All persons who think themselves aggrieved by any judgment of any justice or justices in any case aforesaid may appeal to the justices of the said county of *Devon* at their next general quarter-sessions for the said county, who are hereby empowered finally to determine the same; so that the person appealing enter into a recognizance before such justice or justices with sufficient sureties to abide the event of such appeal and the determination thereon, and so that such person so appealing shall by himself or his agent give ten days previous notice in writing of such appeal to the party against whose act such appeal shall be made; and the justices at the said sessions are hereby required to hear and determine the matter of every such appeal, and make such order therein, and award such costs as to them shall seem reasonable; and by their order or warrant to levy the costs so awarded by distress and sale, &c. rendering the overplus, &c. after deducting the charges, &c. which determination shall be final and conclusive to all parties concerned, and not removeable by *certiorari*, or any other writ or process whatsoever, into any court of record at *Westminster*. *f. 5.*

Declaring the
act public.

And this act shall be taken to be a public act. *f. 6.*

And by the 45 G. 3. c. 33. Certain other provisions are enacted with respect to the rivers in the county and borough of *Carmarthen*.

No person shall put in the waters of *Thames*, *Humber*, *Ouze*, *Trent*, nor any waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmon, lampreys, or any other fish, may in anywise be taken or destroyed; on the like pain. 13 R. 2. *f. 1. c. 19.*

The waters of *Lon*, *Wyr*, *Aldersee*, *Rybbyl*, and all other waters in *Lancashire*, shall be put in defence as to taking of salmon from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner. *Id.*

The justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts above mentioned; and shall survey and search all the

the wears in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under conservators, who shall be sworn to make like survey, search, and punishment. And they shall inquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them; and if they be thereof convicted, they shall have imprisonment, and make fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine. 17 R. 2. c. 9.

3. By the 1 El. c. 17. No person of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being kepper or shedder; nor any pike or pikerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in length 12 inches: and no person shall fish, or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bulheads, gudgeons, and eels;) on pain of forfeiting 20s. for every offence, and also the fish, nets, and engines. *f.* 1, 2, 3, 4, 5.

Spawn in general and fish under size and out of season.

(Note, in some editions of the statutes it is 20l. in others 20s.; in the record it is not distinguishable whether it be pounds or shillings. The latter seems more adequate to the offence.)

And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines. *f.* 6, 7.

The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40s.; half to the king, and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it be found, the former jury shall forfeit every one 20s. to the lord of the leet. *f.* 8, 9, 10.

If the offence be not presented in the leet within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.) *f.* 11, 12.

By the 33 G. 2. c. 27. No person shall take or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long; and any person may seize the same, together with the baskets and package, and charge a constable or other peace

officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20s. to be levied by distress by warrant of such justice, and distributed half to the prosecutor, and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid. — Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions. — And the form of the conviction may be thus :

Be it remembered, that on this ——— day of ——— in the ——— year of the reign of ——— A. O. is convicted before me ——— one of his majesty's justices of the peace for the ——— of ——— and I do adjudge him to pay and forfeit the sum of ———. Given under my hand and seal the day and year above-said. f. 13. 15, 16, 17, 18, 19.

Nets standing
day and night.

No person shall fasten any nets over rivers, to stand continually day and night; on pain of 100s. to the king. 2 H. 6. c. 15.

III. *Of the herring and other fisheries.*

Herring fishery.

If any person shall wilfully damnify, spoil, or destroy, without consent of the society of the *Free British Fishery*, any of the nets, sails, cordage, stores, or other materials belonging to the said society, he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, to be levied by distress; and for want of sufficient distress, be committed to the house of correction there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made; information to be exhibited, or prosecution to be in six calendar months. 28 G. 2. c. 14. f. 9.

By 26 G. 3. c. 81. After 1st June 1787 an annual bounty is granted for 7 years to owners of ships of certain dimensions and constructions [which by 27 G. 3. c. 10. is extended to all vessels however built] of 15 tons and upwards employed in the *White Herring* fishery, under certain regulations particularly set forth in those acts; and so far as the same fall under the jurisdiction of justices of the peace, it is thought necessary to insert them as follows;

On

On all barrels and casks in which any fish (except fresh fish) shall be packed, either for exportation or home consumption, the names of the curers of such fish shall be marked and burnt with iron, in fair, large, legible, conspicuous, and permanent characters; and the staves of every barrel in which any white herrings, or wet white fish, shall be packed or put up for exportation, shall not be a less thickness at the bulge than half an inch, and shall be full bound; and in default thereof the same may be seized and secured by any officer of excise or customs; and on proof of the fact on oath, before one justice, the same, together with the casks, shall be forfeited. 26 G. 3. c. 81. f. 17, 18.

Casks to be marked.

Thickness of the staves.

And every person who for 7 successive years shall have followed the occupation of a seaman or fisherman on board any ship or vessel employed in the fisheries of *Great Britain*, (being a married man,) may set up and exercise such trade as he is apt and able for, in any town or place in *Great Britain*, without molestation by reason of using such trade, as freely and with the same provisions and regulations as any mariner or soldier by 22 G. 2. c. 44. are authorized to do. 26 G. 3. c. 81. f. 19.

Fisherman may set up trades.

And whereas by 1 G. c. 18. & 9 G. 2. c. 33. No sort of flat fish nor fresh fish whatsoever (except turbot and lobsters) could be legally imported, or sold in *England*, which were taken by, bought of, or received from, any foreigner, or out of any strange bottom (except protestant strangers) inhabiting this kingdom, on forfeiture of 100l. by the person offending; and the master of the vessel in which any such fish shall be illegally imported was also liable to forfeit 50l. to be recovered in the courts at *Westminster*. And whereas the great expence and delay attending such prosecutions discourage persons from suing for such penalties, it is therefore enacted that if upon complaint made on oath before two justices by any officer, it shall appear, that he doth know, or is credibly informed, or hath cause to believe that any fish hath been imported or exposed to sale, in the port of *London*, contrary to the afore-said acts, such justices may summon the person accused to appear before them at a time and place specified in the summons; and if he shall not appear, then on due proof of service of such summons either personally or by leaving the same at his usual place of abode whilst he shall be on shore, or not being on shore, with some person in the vessel to which he belongs, may by warrant cause such person to be brought before them at such time and place as shall be specified in such warrant, and thereupon whether such party shall appear upon such summons or be apprehended, the justices may

Certain penalties imposed by 1 G. c. 18. and 9 G. 2. c. 33. may be recovered by two justices.

proceed to hear and determine the matter of the complaint.
26 G. 3. c. 81. f. 43.

All penalties imposed by 9 G. 2. c. 33. may be recovered by two justices.

All pecuniary penalties by the said act of 9 G. 2. c. 33. imposed may be recovered before two justices, on due proof and conviction of the offence, by confession or oath of one witness; and the whole of such penalties shall go to the informer; and if such penalty shall not upon conviction, with the costs thereof, be immediately paid, the same shall be levied by distress and sale; and for want of sufficient distress, the offender shall be sent by the same justices to the common gaol for one year, unless the penalty shall be sooner paid. 26 G. 3. c. 81. f. 46.

Offenders may be detained for 48 hours.

To the end that the person convicted in any of the penalties last aforesaid may not by flight after conviction evade imprisonment, such justices immediately after conviction may order such offender into custody (in case the penalty be not immediately paid) during such time, not exceeding 48 hours, as they shall think proper to allow for return of the warrant of distress. f. 47.

Where the goods are not sufficient to answer the distress.

Provided, that if it shall appear to the satisfaction of such justices, either by confession or other witness, that such party hath not goods or chattels sufficient to answer the penalty, such justices may, without issuing any warrant of distress, commit the party so convicted, as if such warrant had actually issued, and a return of *nulla bona* been made thereon. f. 48.

Security may be given for payment of the penalty.

Provided also, that if any such offender ordered to be committed shall before his actual commitment to prison procure security to be given by two sufficient sureties for payment of the penalty and charges within 14 days exclusive of the day of conviction, the justices may accept such security; and on non-payment within the time limited, the same or any other justices may cause the party convicted, and his sureties, to be apprehended by warrant, and them may commit to the common gaol, for the same time as the person convicted was liable to have been imprisoned if no security had been given, unless the penalty and charges shall be sooner paid. f. 49.

Appeal.

Any person so convicted thinking himself aggrieved by the judgment of any justices, may within 3 calendar months then next appeal to the sessions, giving six days' notice to the informer of such his intent, and with two sureties entering into recognizance before one justice to appear and prosecute such appeal, and abide the order or determination of the same court, and pay the costs awarded at such sessions (if any); and if such judgment be affirmed, the party appealing shall pay to the informer double costs to be ascertained by order of the court. f. 50.

In case the person appealing shall have paid the penalty into the hands of the justices by way of deposit, or shall be then imprisoned, such person may appeal within the time aforesaid on his entering (without sureties) into such recognizance aforesaid, and remaining in prison in the mean time, or depositing such penalty with the justices until the merits of the said appeal shall be determined. *f. 51.*

No conviction or judgment as aforesaid shall be set aside by the sessions for want of form, or through the mis-stating of any fact, circumstance, or other matter, provided the material facts alledged in such conviction or judgment, and on which such conviction shall be grounded, be proved to the satisfaction of the court: And no such conviction or judgment, nor any order or proceeding of the said court shall be removed by *certiorari* into any other court. *f. 52.*

Convictions not to be set aside for want of form.

Persons appearing in the complaint to be necessary witnesses may be summoned by the justices to appear before them; and in case of non-appearance then on due proof of having been duly summoned may be apprehended by warrant of such justices, and brought before them; and if any witness shall refuse to be sworn, or to give evidence, or wilfully forswear himself, or prevaricate in his evidence, such justices may by warrant commit him to the common gaol for one year without bail. *f. 44.*

Witnesses.

And the examination of every witness shall be taken down in writing, by or before the said justices, and in case the party accused cannot be made to appear at the time of such examination, and such witness cannot be made to attend when such party shall appear: in that case such examination in writing may be read and made use of, and shall have the same effect as if such witness had been examined *viva voce*. *f. 45.*

Written evidence.

By the 48 G. 3. c. 110. Many important regulations are enacted respecting the herring fishery: but they are not inserted in this place, as being so confined in their nature and objects. It may be observed however that by the 57th s. 6. of the act the several penalties and forfeitures thereof may be recovered in the same manner as penalties and forfeitures under the excise acts may be.

By 51 G. 3. c. 101. it is enacted, that the bounty of three pounds *per ton* granted by the 48 G. 3. c. 110., shall be extended to the owner of any whole-decked bus or vessel of not less than 45 tons burthen, being *British*-built, owned in *Great Britain*, and manned, navigated, and registered according to law, which shall be fitted out for and be actually employed in the deep sea *British* white herring fishery on the coasts of *Great Britain* or *Ireland*, in the

manner and subject to all the regulations and provisions prescribed by the said act.

How vessels
shall be manned.

And by §. 2. no such vessel of less than 60 tons and not less than 45 tons burthen, shall be deemed to be properly fitted out for and to be duly employed in the *British* deep sea white herring fishery, so as to entitle the owner or owners to any bounty on the tonnage thereof by virtue of the said act, unless such bus or vessel shall be manned with 10 men, or with eight men and two boys not under 13 years of age.

By the 52 G. c. 153. The bounty of three pounds per ton, granted by 48 G. 3. c. 110., to the owner or owners of any whole decked bus or vessel of not less than 60 tons burthen, shall be paid to the owner or owners of any whole decked bus or vessel of not less than 45 tons burthen, being *British*-built, owned in *Great Britain*, and manned, navigated, and registered according to law, which since 26th July 1811 has been or shall be fitted out and actually employed in the deep sea *British* white herring fishery on the coasts of *Great Britain* or *Ireland*, in the manner and subject to all the regulations and provisions prescribed by the said 48 G. 3.

And no such vessel of less than 60 tons and not less than 45 tons burthen, shall be deemed to have been or to be properly fitted out for and duly employed in the *British* deep sea white herring fishery, so as to entitle the owner thereof to any bounty on the tonnage thereof, by virtue of the said act or this act, unless such bus or vessel shall have been or shall be manned with 10 men or with eight men and two boys not under 13 years of age. §. 2.

IV. Of the Oyster-fisheries.

By the 31 G. 3. c. 51. If any person shall with any net, trawl, dredge, or other instrument or engine whatsoever, take or catch any oysters or oyster brood, within the limits of any oyster fishery of this kingdom, or shall dredge for oysters or oyster brood, or use any oyster dredge, or any net, instrument, or engine whatsoever within the limits of any such fishery, for the purpose of catching oysters or oyster brood although none be actually taken; or shall drag upon the ground of any such fishery with any net or other engine; every such person (other than the owners, lessees, or occupiers of such fishery, or persons lawfully entitled to catch oysters therein,) shall be deemed guilty of a misdemeanor, and shall and may be indicted for the same at the assizes or quarter sessions for the county or division; and the justices

Unlawfully
fishing in any
oyster fishery.

in sessions shall hear and determine all such offences: And every such offender being convicted by verdict, or on his own confession, shall be punished by fine and imprisonment, or either of them, as the court shall think proper; such fine not to exceed 20l., nor be less than 40s.; and such imprisonment not to be for more than three months, nor less than one month. *f. 1.*

Any justice, upon complaint on oath within 30 days of such offence having been committed, may by warrant cause such offender to be brought before himself or any other justice acting for the county or division, who may commit him to the common gaol or other usual place of confinement for prisoners until the next assizes or quarter sessions whichever shall first happen, unless he enter into recognizance with two sureties in 20l. each to appear either at the said first assizes or general quarter sessions, which shall first happen, and there to answer to any indictment which may be preferred against him by virtue of this act. *f. 3.*

Offenders may be apprehended.

If any such person (except as aforesaid) shall be found as aforesaid, &c. within the limits of any oyster fishery, and shall refuse to discover his real name and true place of abode or residence to the owner, lessee, or occupier of such fishery, or his apprentice or servant, he may seize, secure, and detain such person so found actually taking or catching, or dredging, or using as aforesaid, or with any net as aforesaid dragging as aforesaid, and refusing as aforesaid, and carry him before a justice, who on oath being made of the offence shall proceed against him in the same manner as if he had been apprehended and brought before him by virtue of a warrant. *f. 4.*

Offenders refusing to tell their names.

Provided, that no justice by this act shall commit any person, or require security from him for his appearance as aforesaid, unless one sufficient householder being an owner, lessee, or occupier, or otherwise lawfully entitled to catch oysters in such fishery, (whose oath that he is such owner, &c. shall be sufficient evidence thereof,) shall enter into recognizance before the said justice in 20l. for his appearance at such next assizes or quarter sessions, and there to prefer and prosecute with effect a bill of indictment against such offender. *f. 5.*

Recognizances to prosecute.

And if, after any such person shall have been committed, two sufficient sureties shall before the justice by whom committed enter into recognizance in 20l. each for the appearance of such person so committed at such next assizes or quarter sessions, which shall first happen, and to answer to any indictment which may be preferred against him under this act; such justice may by warrant order such person to be

Offenders may be bailed.

discharged from his commitment and delivered out of custody. *f. 6.*

Not to extend to floating fish.

Provided, that nothing herein shall extend to hinder any person from catching or fishing for any floating fish in the waters or creeks within the limits of any oyster fishery. *f. 2.*

Nor to affect any former act.

Provided always, that this act shall not affect any act now in force respecting any particular oyster fishery; or preclude any prosecution at the common law for any offence herein described: but no person shall be liable to have an action brought against him for any offence for which he shall have been punished by this act. *f. 7, 8.*

Persons stealing oysters or oyster brood from oyster beds, &c. shall be deemed guilty of felony.

By 48 G. 3. c. 144. *f. 1.* Reciting that whereas the provisions of the 31 G. 3. c. 51. have been found inadequate to the protection of the oyster fisheries of this kingdom; and doubts have arisen, since the passing of the said act, whether the taking oysters or oyster brood from any oyster bed or laying, or from any oyster fishery, can under any circumstances be deemed felony, and punishable as such; it is enacted, that every person who shall at any time after the 1st of August 1808, knowingly and wilfully steal, take; and carry away any oysters or oyster brood from any oyster bed, or oyster laying, or oyster fishery, being the property of any person or body politic or corporate, and sufficiently marked out as such, shall be deemed guilty of felony, and be transported for (not exceeding) seven years, or be imprisoned and kept to hard labour in any common gaol or house of correction, or penitentiary house, or imprisoned only for (not exceeding) three years, as the court before whom any such person shall be convicted may adjudge.

Act not to affect persons claiming a right to take away such oysters, &c.

But by *f. 2.* Nothing in this act contained shall make liable any person to the penalties of this act who shall take or carry away any oyster or oyster brood from any oyster bed, oyster laying, or oyster fishery, wherein such person shall have or claim to have a right to take and carry away such oysters, or oyster brood.

Parish need not be stated in indictments, and where the county cannot be ascertained, the offence may be stated to be in the county where offence committed.

And by *f. 3.* Reciting that whereas doubts may arise in what parish or county any oyster beds, layings, or fisheries are situated, and on that account difficulties may occur in bringing offenders to justice; it is further enacted, that it shall be sufficient in any indictment under this act, or under the said recited act, to describe, either by name or otherwise, the bed, laying, or fishery in which the offence shall have been committed, without stating the same to be in any particular parish; and where the offence is committed on the border of any county, so as to make it difficult to ascertain the county, such offence may be stated to have been com-

committed in the county in which the indictment shall be preferred, being either the county in which the offence was committed or the adjoining county.

And by *f. 4.* It shall be lawful for justices for towns, corporate, or other places not being counties of themselves, and having special or exclusive jurisdictions, to act in all cases arising within their respective jurisdictions in like manner as any justice of the peace for any county, riding, or division may act for such county, riding, or division, in the execution of the said recited act, or of any law for protecting the oyster fisheries, and broods of oysters.

Justices for towns, &c. may act as justices for counties.

And by *f. 5.* This act shall not repeal any of the provisions of the said 31 G. 3. c. 51. except so far as the same respect the stealing and taking of oysters from any oyster bed, laying or fishery.

Provisions of 31 G. 3. c. 51. not to be repealed by this act.

By the 50 G. 3. c. 5. the 39 G. 3. c. 100. is revived and continued till *March 25, 1811.*

V. *Rules concerning fishing in or near the sea.*

No person shall take, kill, or destroy any lobsters on the coast of *Scotland* from *June 1* to *Sept. 1*, on pain of 5*l.*: to be recovered by any person who shall inform and sue for the same, on a summary complaint, before two justices of the shire on the coast where the offence shall be committed. 9 G. 2. c. 33. *f. 4.*

Lobsters.

Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall on conviction before one justice or mayor forfeit for every offence 10*l.*, half to the king, and half to him that shall sue: to be levied by the constables or churchwardens by distress. 3 *J. c.* 12. *f. 2.*

Erecting a new wear.

Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea-fish, in any wear or other engine or device whatsoever, shall forfeit for every offence 10*l.* in like manner. *f. 2.*

Spawn of sea fish.

And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw net, or drag net under three inches mesh, *viz.* 1½ inch from knot to knot (except for the taking of smoulds in *Norfolk* only,) or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea fish may be destroyed, shall in like manner forfeit such net, and also 10*s.* for every offence, half to the poor, and half to him that shall sue. *Id.*

Size of nets at sea.

But

But this act shall not extend to any net of lesser mesh only for taking herrings, pilchards, sprats, or lavidnian. *Id.* §. 3.

And by a subsequent statute, if any person shall use at sea on the *English* coast any trawl net, drag net, or set net, for catching any fish (except herrings, pilchards, sprats, or lavidnian) which hath the mesh less than $3\frac{1}{2}$ inches from knot to knot; or which hath a false or double bottom, cod, or pouch; or shall put any net upon or behind another; in order to catch or destroy the small fish which would have passed through any single net of 3^1 inches mesh, he shall on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20l., half to the informer, and half to the poor; to be levied by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets by warrant of such justice to be burned. 1 *G. 3. 2. c. 18.* Persons aggrieved may appeal to the next sessions. *Id.*

Size of sea fish.

By the same act of 1 *G. 3. 2.* If any person shall bring to shore, or expose to sale, or shall exchange for any other goods, matter, or thing, any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, plaice or dab 8, flounder 7; he shall forfeit the fish to the poor, and also 20s., half to the informer, and half to the poor; to be levied in the like manner; for default of payment or of sufficient distress, to be sent to the next house of correction, or other common gaol or prison of the county, city, town, or place to be severely whipped and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next sessions. — The prosecution must be within one month.

But by the 33 *G. 2. c. 27.* Bret or turbot, brill or pearl, although under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6d. a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required; the same shall be forfeited, and the offender shall also forfeit 20s. to be recovered, mitigated, and applied, as the penalties in the said act mentioned under the last head relating to the spawn of fish, and fish under size, and out of season; and the money paid shall be returned to the party who paid the same. §. 11.

Ships proceeding to the whale fishery.

Whereas by 26 *G. 3. c. 41. §. 1.* It is enacted, that before any vessel proceed on the *Whale Fishery*, oath shall be made by the owner and the master or chief officer of the vessel

vessel before the principal officers of the customs of the port from which such vessel intends to proceed, that it is really and truly their firm purpose and determined resolution that such vessel shall, as soon as license shall be granted, forthwith proceed on a voyage to the *Greenland Seas*, or *Davis's Straits*, or the seas adjacent, and there in the approaching season use the utmost endeavours of themselves and ship's company to take whales or other creatures living in the sea, and on no other design or view of profit in such voyage, and to import the whale fins, oil, and blubber thereof into *Great Britain*: In case of absence from illness or other unavoidable circumstances, such officers may accept an affidavit thereof sworn by such owner or owners before any justice, in which affidavit shall be declared every matter and thing which by the said recited act such owner is required to declare. 42 G. 3. c. 22. s. 4.

VI. *Importing fish.*

If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 C. 2. c. 2. May be seized.

And by the 1 G. 3. c. 18. and 9 G. 2. c. 33. No fish taken by or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or caviar, lobster, and turbot,) on pain of 100l., and the master of the vessel 50l.; half to the poor, and half to the informer who shall sue in 12 months in any of the courts at *Westminster*. Penalty 100l.

For fishing, so far as the salt duties are concerned therein, may be consulted that part of the title *Excise*, which treateth of the duties upon salt.

The fish markets in *London* and *Westminster* are regulated by the statutes of 22 G. 2. c. 49. 29 G. 2. c. 39. 33 G. 2. c. 27. 2 G. 3. c. 15. and 42 G. 3. c. 19. which are too large and not general enough to be here inserted.

Flight. See *Forfeiture*.

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. 1 *Inst.* 161.

It

It seems that at the common law a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time. And it seems certain that even at this day he who is wrongfully dispossessed of his *goods* may justify the re-taking of them by force from the wrong-doer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. 1 *Haw. c. 64. s. 1.* and 3 *Salk. 169.* Perhaps, however, as Lord *Kenyon* observed, some doubt may arise respecting what Mr. Serjt. *Hawkins* says, that at common law the party may enter with force into that to which he has a legal title. But without giving any opinion concerning that *dictum* one way or the other, but leaving it to be proved or disproved whenever that question should arise; all that the court wished to say was, that their opinion in the principal case left that question untouched, it appearing by the indictment there (which was at common law) that the defendants "unlawfully" entered, and therefore the court could not intend that they had any title. *R. v. Wilson* and others. 8 *T. R. 364.*

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 *Haw. c. 64.*

However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be punishable *at the king's suit*, for doing what is prohibited by statute as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. *Id.*

Yet still forcible entry and detainer are offences at the common law; and the prosecutor, if he please, may proceed in that way: but then the indictment ought to express not only the common technical words *with force and arms*, but also such circumstances as thereby it may appear upon

upon the face of the indictment to be more than a common trespass; for a man cannot be indicted for a bare trespass. 3 *Bur.* 1698, 1731.

Indeed there is no doubt but that the offence of forcible entry is indictable at common law, though the statutes give other remedies to the party grieved, restitution and damages; and therefore in an indictment on the statutes it is necessary to state the interest of the prosecutor: but I do not know, said Lord *Kenyon* Ch. J. that it has ever been decided that it is necessary to allege a greater degree of force in an indictment at common law for a forcible entry than in an indictment on the statutes. Therefore an indictment at common law, charging the defendants with having "unlawfully and with a strong hand" entered the prosecutor's mill and certain lands and houses, and expelled him from the possession, is good: for the words, "with a strong hand," mean something more than a common trespass. 8 *T. R.* 357.

But the safest and most usual way is to proceed upon the statutes. Concerning which, (after having premised that *they who keep possession with force in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be endamaged by force of any of the statutes concerning forcible entry.* 8 *H. 6. c. 9. f. 7.* 1 *Haw. c. 64.* I shall consider those several statutes, with the interpretation that hath been put upon them under the following heads;

Persons having been in possession three years.

- I. *What is a forcible entry.*
- II. *What is a forcible detainer.*
- III. *How the same are punishable by action at law.*
- IV. *How punishable at the general sessions.*
- V. *How punishable by one justice.*
- VI. *How punishable on a certiorari.*
- VII. *How punishable as a riot.*

I. *What is a forcible entry.*

By the 5 *R. 2. c. 8.* None shall make any entry into any lands or tenements (or benefice of holy church, 15 *R. 2. c. 2.* or other possessions, 8 *H. 6. c. 9. f. 2.*) but where entry is given by the law: and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner, on pain of imprisonment and ransom at the king's will.

Or

Or other possessions] It seems clear that no one can come within the danger of these statutes, by a violence offered to another in respect of a way, or such like easement, which is no possession. And there seems to be no good authority that an indictment will lie on this case for a common or office. 1 Harw. c. 64. f. 31.

Not with strong hand, nor with multitude of people] It seems certain that if one who pretends a title to lands barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 Harw. c. 64. f. 20.

Forcible entry

But it seemeth that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, tho' it be but to cut or take away another man's corn, grass, or other goods, or to fell or crop wood, or to do any other like trespass, and though he do not put the party out of his possession, yet it seemeth to be a forcible entry. Dalt. c. 126.

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; though such acts are counted a disseisin with force, yet they are not punishable as forcible entries. Id.

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being, this seemeth to be a forcible entry punishable by the statutes. Id.

So also shall those be guilty of a forcible entry, who having an estate in land by a defeasible title continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 Harw. c. 64. f. 23.

One, who barely agrees to a forcible entry not within the statute

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within the statutes, because he no way concurred in or promoted the force. Id.

The forcible entry must be accompanied with actual violence or terror

And, in general, it seemeth clear that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual violence or terror; and therefore that an entry which hath no other force than such as is implied by the law, in every trespass whatsoever, is not within these statutes. Id.

R. v. Wilson and eleven others, M. 40 G. 3. The defendants were indicted for a forcible entry and detainer at common law. The first count stated, that they with force and arms *unlawfully* and injuriously, and *with a strong hand*, entered, &c. &c. The third count was the same as the first, in *those words*: the second and fourth, the same as first and third, excepting that they omitted the words *with a strong hand*. There was a demurrer to all these counts; and in support of the demurrer, it was contended that a *private trespass* only was charged upon the face of the indictment, and not a public breach of the peace indictable.

Against the demurrer, it was admitted that the second and fourth counts were not maintainable. And by the court these points were determined.

A mere trespass, which is the subject of a civil action, and where the words *vi et armis* are a matter of form, cannot be converted into an indictable offence.

That the offence of forcible entry is indictable at common law.

In an indictment on the statutes, it is necessary to state the interest of the prosecutor.

It is sufficient to state the same degree of force in an indictment at common law, and in an indictment upon the statutes; but there must be stated that degree of force and violence in fact which constitutes the offence.

The degree of force must be stated in the indictment

The words *manu forti* mean something more than a common trespass.

It is not sufficient to charge the defendant with having entered *vi et armis*.

No particular technical words are necessary in such an indictment at common law; all that is required is, that it should appear by the indictment that such force and violence have been used as constitute a public breach of the peace.

And the first and third counts were adjudged good. And at another day Lord *Kenyon*, C. J. added, that the court desired that their decision might not be considered as a precedent in other cases to which it did not apply. And that what *Hawkins* says, that at common law the party may enter with force into that to which he has a legal title, was left untouched by this case, for that here the indictment stated the defendants to have *unlawfully* entered, and therefore the court could not intend that they had any title.

8 T. R. 357.

As to the matter of *violence*; it seems to be agreed that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as

The matter of violence

by

*entry not forcible
drawing a latch
etc*

by breaking open the doors of a house, whether any person be in or not, especially if it be a dwelling house, and perhaps also by an act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand*, or *multitude of people*; and it hath been holden that an entry into a house through a window, or by opening a door with a key, is not forcible. 1 *Haw. c. 64. f. 26.*

As to the circumstances of terror

In respect of the circumstances of *terror*; it is to be observed, that whenever a man either by his behaviour or speech at the time of his entry gives those who are in possession just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror by carrying with him such an unusual number of attendants, or by arming himself in such a manner, as plainly intimates a design, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. *Id. f. 27.*

But it seems that no entry shall be judged forcible from any threatening to spoil another's goods, or to destroy his cattle, or to do him any other such like damage which is not personal. *Id. f. 28.*

However, it is clear that it may be committed by a single person, as well as by twenty. *Id. f. 29.*

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not.

II. What is a forcible detainer.

It seemeth certain that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw. c. 64. f. 32.*

III. How they are punishable by action at law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably and after holden out with *strong hand*, the party grieved shall have assize of novel disseisin, or writ of trespass against the disseisor; and if he recover, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king. 8 H. 6. c. 9. f. 6.

The

The party aggrieved shall have assize, &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force and for the king; and he shall make fine to the king, although his right be never so good. *Dalt. c. 129.*

Treble damages.] And this he shall recover as well for the mesne occupation as for the first entry: and albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also; for the word *damages* includeth costs of suit. *Inst. 257.*

IV. *How punishable at the general sessions.*

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment (A) on the statute of 8 H. 6.; which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt. c. 129.*

In the caption of which indictment, it will be sufficient to say *justices assigned to keep the peace of our lord the king*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. 1 *Haw. c. 64. f. 36.*

And the tenement in which the force was made, must be described with convenient certainty; and the indictment must set forth that the defendant actually entered, and ousted the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. *Id. f. 37, & seq.*

But if a man's wife, children, or servants, do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt. c. 132.*

An indictment for forcible entry was quashed, for not setting forth that the party was seised or disseised, or what estate he had in the tenement: for if he had only a term for years, then the entry must be laid, into the freehold of A. in the possession of B. 3 *Salk. 169.* 3 *Bur. 1732.* We need scarcely observe that this respects an indictment on the statutes.

V. *How punishable by one justice.*

For a more speedy remedy, the party grieved may complain to any one justice, or to a mayor, sheriff, or bailiff, within their liberties. 8 H. 6. c. 9.

But although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

Concerning which power of one justice it is enacted as follows;

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved, (without any examining or standing upon the right or title of either party,) take sufficient power of the county, and go to the place where such force is made. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2. *Dalt. c. 44.*

Complaint — by the party grieved.] Yet these words do not enforce any necessity of such a complaint; for it is holden that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, though no complaint at all be brought unto him by any party grieved thereby. *Lamb. 147.*

Power of the county.] All people of the county, as well the sheriff as other, shall be attendant on the justices, to arrest the offenders; on pain of imprisonment and fine to the king. 15 R. 2. c. 2.

If the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. *Dalt. c. 44.*

And if after such entry made the justice shall find such force, he shall cause the offenders to be arrested. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2.

He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. *Dalt. c. 44.*

Also such justice ought to make a record (B) of such force by him viewed; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the sessions by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace, and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record

After an indictment for a forcible entry, the justices were committed out of the county, the 21st of Oct. 18. 12. 8. Hen. 6. Ch. 9. the 1st of Nov.

record thereof, in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual than if the force had been found by a jury, upon the evidence of others. (This is as to the fine and imprisonment, but not as to restitution.) 15 R. 2. c. 2. *Dalt. c. 44.*

And the offenders being arrested (as before is said,) *shall be put in the next gaol (C) there to abide convict by the record of the same justice, until they have made fine and ransom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is said that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c. 44. 1 Haw. c. 64. f. 8.*

And if such offenders being in the house at the coming of the justice shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c. 44.* *The justice cannot arrest if no force is shown*

But howsoever if the force be found afterwards by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Id.*

Note; Mr. Dalton, in this place says *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] H. 1 G. 2. R. v. Sir Edm. Elwell. He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides that there should be a fine; but it was insisted, that it being now before the king's bench by a *certiorari*, they might set the fine. But by the court: We are not to execute the judgment of an inferior court. The conviction is to be upon view; and they who view the nature of the

A fine must be set by the justices

force are the properest judges what fine to set: and though a *certiorari* should come before the fine is set, yet it would be no contempt in the justices to complete their judgment by setting one. *Lambard* indeed was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine, because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged. 2 *Str.* 794. 2 *L. Raym.* 1515. 1 *Sess. C.* 280.

The same was likewise solemnly resolved in *Leighton's* case; and that the justice may assess the same, either before the commitment or after. 1 *Haw. c.* 64. f. 8.

*Some must be ad-
dressed upon every
offender*

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c.* 44.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44.

*Party ousted cannot
be restored to his pos-
session by justice*

And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the inquiry of a jury.

Concerning which it is enacted as follows; and though that the persons making such entry be present, or else departed before the coming of the justice, he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that though he go not to see the place where the force is; *Dalt. i.* 44.) have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force. 8 H. 6. c. 9. f. 3.

In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf to cause to come before him, sufficient and indifferent persons dwelling next about the lands so entered, to inquire of such entries; whereof every man shall have lands or tenements of 40s. a year above reprises. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20s., and at the second day 40s., and at the third day 100s., and at every day after double. And the sheriff making default shall on conviction before the same justice or before the judge of assize forfeit 20l.; half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king. f. 4, 5.

Before

Before the same justice.] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king.

Dalt. c. 44.

And the defendant also, if he be not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Haw. c. 64. f. 60.*

And it seems to be settled at this day that if the defender tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. *Id.* and see 3 *Salk. 169.*

The defendant may also by the 31 *Eliz. c. 11.* plead *three years possession*; whereby it is enacted that no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation or been in quiet possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried; and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgments on other actions.

It hath been holden that the plea of such possession is good, without shewing under what title or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Haw. c. 64. f. 53.*

And it was holden by the court in *Leighton's case*, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expressly given him. 1 *Haw. c. 64. f. 8.*

And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c. 133.* 1 *Haw. c. 64. f. 60.*

Upon which traverse tendered, the justice shall cause a new jury to be returned by the sheriff, to try the traverse;

which may be done the next day, but not the same day. *Dalt. c. 133.*

And it seemeth he who tendereth the traverse shall bear all the charges of the trial; and not the king or the party prosecuting. *Id.*

And if such forcible entry or detainer be found (E) before such justice then the said justice shall cause to reſeiſe (F) the lands and tenements ſo entered or holden, and ſhall reſtore the party put out, to the full poſſeſſion of the ſame. 8 H. 6. c. 9. ſ. 3.

The ſaid juſtice.] It ſeems to be agreed that no other juſtices of the peace, except thoſe before whom the indictment ſhall be found, ſhall have any power either at the ſeſſions or out of it, to make any award of reſtitution. 1 *Haw. c. 64. ſ. 50.*

Shall cauſe to reſeiſe.] And the juſtice may break open the houſe by force to reſeiſe the ſame; and ſo may the ſheriff do, having the juſtice's warrant. *Dalt. c. 44.*

Reſeiſe.] That is, ſhall remove the force, by putting out all ſuch offenders as ſhall be found in the houſe, or upon the lands, that entered or held with force. *Dalt. c. 130.*

And ſhall reſtore the party put out.] And this he may do in his own proper perſon; or he may make his warrant to the ſheriff to do it. *Dalt. c. 44. 1 Haw. c. 64. ſ. 49.*

And by 21 J. c. 15. It is enacted that ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by elegit, ſtatute merchant and ſtaple, of lands or tenements by them ſo holden, which ſhall be entered upon by force, or holden of them by force.

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found, ought to award reſtitution, yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed or certified thither by *certiorari*, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled; for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c. 44.*

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will

will order restitution to the party injured. As in the case of *R. v. Jones, M. 8 G.* A conviction of forcible entry was quashed for the old exception of *messuage* or *tenement*, by reason of the uncertainty: but the restitution was opposed on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction. 1 *Str.* 474.

VII. *How punishable as a riot.*

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. *Dalt. i.* 44.

A. Indictment for a forcible entry and detainer.

Westmorland. *THE* jurors for our lord the king upon their oath present that A. I. late of the parish of _____ in the county aforesaid, gentleman, on the _____ day of _____ in the _____ year of the reign of _____ was possessed of a certain messuage, with the appurtenances, situate, lying, and being in _____ in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof one A. O. late of _____ in the said county, yeoman, afterwards, to wit, the said _____ day of _____ in the year aforesaid, into the same messuage, with the appurtenances aforesaid in _____ aforesaid, in the parish and county aforesaid with force and arms, and with strong hand (a), unlawfully did enter, and the said A. I. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said A. O. him the said A. I. from the aforesaid _____ day of _____ in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage,

(a) These words are not necessary in an indictment for forcible entry at common law. They are added in indictments on the statute, because the statute uses them. *Say.* 225. But enough must appear upon the indictment, to shew that it was not a common trespass. *R. v. Wilson* and others, 8 *T. R.* 357. which see *ante.*

with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and doth still keep out, to the great damage of the said A. I. against the peace of our said lord the king, and against the form of the statutes (b) in that case made and provided.

Note ; If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee ; and consequently he must be thereof *disseised* : otherwise it is of a lesser estate, of which he is not properly said to, be *seised*, but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, removed*, or the like.

B. Record of a forcible detainer upon view.

Note ; The books upon the office of a justice of the peace generally set forth that the record ought to be in the present tense, and not in the time past, (and herewith do accord the adjudged cases in the court of king's bench, 1 *Str.* 443) ; yet nevertheless they all exhibit the form of a record in the time past, and not in the present : Therefore I have taken the liberty to alter the same from the record in *L. Raymond* of the conviction of Sir *Edm. Elwell* aforesaid and others ; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible *detainer* rather than a forcible *entry*, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof till after the entry is made.

Kent, *BE* it remembered, that on the ——— of ——— in to wit, *B* the ——— year of the reign of our sovereign lord George, &c. at Beckingham, in the county of Kent aforesaid, *Eliz. Elwell* complaineth to us Sir *E. Bettenfon*, baronet, *P. Buriel*, and *W. Passenger*, esquires, three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that Sir *Edm. Elwell*, late of London, baronet, *Joseph Billers*, late of ——— and *Daniel Monty*, late of ——— into the mes-

(a) Though the indictment conclude *contra formam statuti*, these latter words may be rejected, if the indictment be good as an indictment at common law. *Say.* 225. But if the indictment be upon the stat. and bad as such, *Q.* if it can be made good at common law by rejecting the above words, see the above case of *R. v. Wilson*.

fuage of her the said E. E. being the mansion house of her the said E. E. called Langley House, situate within the parish of Beckingham, aforesaid, did enter, and her the said E. E. of the messuage aforesaid, whereof the said E. E. at the time of the entry aforesaid was seised as of the freehold of her the said E. E. for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said E. E. unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same E. E. then to wit, on the said 15th day of Sept. at the parish of B. aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid; which complaint and prayer by us the aforesaid justices being heard, we the aforesaid E. B. baronet, P. B. and W. P. esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid Ed. E., J. B. and D. M. the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she the same El. El. so as aforesaid hath unto us complained; therefore it is considered by us the aforesaid justices that the aforesaid Edmund Elwell, Joseph Billere, and Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid: Whereupon we the justices aforesaid upon every of the aforesaid Ed. E., J. B., and D. M. do set and impose severally a fine of 10l. of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E., J. B., and D. M. being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed to the gaol of our said lord the king, at Maidstone, in the county of Kent aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively to our said lord the king, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. baronet, P. B. and W. P. esquires, the justices aforesaid, to this record our hands and seals do set at the parish of B. aforesaid in the county of Kent aforesaid, on the ——— day of ——— in the ——— year aforesaid of the reign of our said sovereign lord the now king.

C. Mittimus for forcible detainer.

Westmorland. **E**DWARD Haffel *esquire*, one of the justices of our sovereign lord the king, assigned to keep the peace within the said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at ——— in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this present day by A. I. ——— in the said county, yeoman; I went immediately to the dwelling house of the said A. I. at ——— aforesaid in the said county, and there found A. O. late of ——— labourer, B. O. late of the same, weaver, and C. O. late of ———, butcher, forcibly with strong hand and armed power holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said A. O., B. O., and C. O., convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sums of 10l. of good and lawful money of Great Britain to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at ——— aforesaid, in the county aforesaid, under my seal, the ——— day of ——— in the ——— year of the reign of our said sovereign lord king George the third.

Note; By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. **R**ICHARD Whinfield, *esquire*, one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting: on behalf of our said lord the king, I command you that you cause to come before me at ——— in the county aforesaid, on the ——— day of ——— next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of ——— aforesaid, in the county aforesaid, every of whom

whom shall have lands or tenements of 40s. yearly at the least, above reprises, to inquire upon their oaths for our said lord the king, of a certain entry made with a strong hand (as it is said) into the messuage of one A. I. ———— aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled 20s. of issues at the aforesaid day. And have you then there this precept. And this you shall in nowise omit, upon the peril that shall thereof ensue. Witness the said R. W. at ———— in the county aforesaid, the ———— day of ———— in the ———— year of the reign of ———.

The jurors' oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry or detainer] said to have been lately committed in the dwelling house of ———— yeoman, at ———— in this county; you shall have no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.

The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts: So help you God.

E. The inquisition, indictment, or finding of the jury.

Westmorland. **A**N inquisition for our sovereign lord the king, indented and taken at ———— in the said county, the ———— day of ———— in the ———— year of the reign of ———— by the oaths of ———— good and lawful men of the said county, before J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that A. I. of ———— aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne, as of fee [if it be not freehold, then law possessed] of and in one messuage, with the appurtenances, in ———— aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A. O. late of ———— yeoman, B. O. late of the same yeoman, and C. O. late of the same, yeoman, and other malefactors unknown, the ———— day of ———— now last past, with strong hand and armed power into the messuage aforesaid with the appurtenances aforesaid did enter, and him the said A. I. thereof seised, and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage with the

the appurtenances aforesaid, from the said ——— day of ——— until the day of the taking of this inquisition with like strong hand and armed power did keep out, and do yet keep out; to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the jurors aforesaid, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.

C. D. &c.

F. Warrant to the sheriff for restitution.

Westmorland. **M**ARTIN Dunn, esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting; Whereas by an inquisition taken before me the justice aforesaid, at ——— in the county aforesaid, on this present ——— day of ——— in the ——— year of the reign of ——— upon the oaths of ——— and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that A. O. late of ——— yeoman, and B. O. late of ——— yeoman, on the ——— day of ——— now last past, into a certain messuage with the appurtenances of A. I. of ——— aforesaid, in the county aforesaid, gentleman, situate, lying, and being at ——— aforesaid, in the county aforesaid, with force and arms did enter, and him the said A. I. thereof then with strong hand did disseise and drive out, and him the said A. I. thus driven out from the aforesaid messuage, with the appurtenances, from the ——— day of ——— aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be resealed, and that you cause the said A. I. to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seised, according to the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.

Foreign Service.

ENTERING into the service of any foreign state without the king's consent, or contracting with it any engagement which subjects the party to an influence or controul, inconsistent with the allegiance due to his sovereign, such as receiving a pension from a foreign prince without the king's leave, is at common law a high misdemeanour, and punishable accordingly. Such also is disobedience to the king's command to a subject abroad to return home; or to his writ of *ne exeat regno* to a subject at home commanding him to continue here. 4 *Black. Comm.* 122. 1 *Harw.* 22. *Dyer.* 269 a. 1 *East's P.C.* c. 2. f. 23.

The 3 *J. 1. c. 4.* made every person who quitted *England* to serve, or crossed the seas and did serve, any foreign state, not having first taken an oath in the act prescribed, (and charged by 1 *W. 1. c. 8.*) a felon; and made it felony also for any gentleman or of higher degree, or any one who had borne any office in the army, going voluntarily out of the realm to serve, or serving any foreign prince, &c. before he was bound in a bond with two sureties not to be reconciled to the see of *Rome*, nor to enter into any conspiracy against the king. The trial to be where the offence was committed, which is at the place where the party passed out of the kingdom. f. 15. 18, 19, 20. 36.

If any subject shall enlist or enter himself, or shall engage to go beyond the seas, or embark with intent to enlist and enter himself, although no enlisting money be actually paid to him, or if any person shall procure any subject to enlist or enter himself, or hire or retain any subject with intent to cause him to enlist or enter himself, or retain, engage, or procure any subject (though no enlisting money be paid) to go beyond the seas, or embark with intent, and in order to be enlisted to serve any foreign prince, state, or potentate, as a soldier, without his majesty's license under his own manual; he shall be guilty of felony without benefit of clergy. 9 *G. 2. c. 30. f. 1.* 29 *G. 2. c. 17. f. 4.*

And offences committed out of the realm may be tried in any county in *England*. 9 *G. 2. c. 30. f. 2.*

And more particularly foreign service, without the leave of the sovereign, is punishable by the subsequent statutes of *G. 2.* and 29 *G. 2.*

But if any person so enlisted, or inticed to go beyond the seas in order to be enlisted as a non-commissioned officer or private soldier, in any foreign service, shall in 14 days voluntarily

luntarily discover upon oath before any justice or other civil magistrate the person by whom he was enlisted or enticed, so as he be convicted, he shall be indemnified.
f.3.

Forestalling, ingrossing, and regrating.

[5 & 6 Ed. 6. c. 14.—12 G. 3. c. 71.]

Derivation.

Forestalling (*forestellan*, or *forestallan*) in the English Saxon, signifieth properly to *market before the public*, or to *prevent the public market*; and metaphorically, to *intercept* in general; and seemeth derived from *fore*, which is the same as *before*, and *stalle*, a standing place or department; from whence sprang the ancient word *stallage*, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market.

Ingrossing is from *in*, and *gross*, great or whole.

And *regrating*, from *re*, again, and the French *grater*, to *grate* or *scrape*; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

All the statutes against those offences are repealed.

There have been several statutes made from time to time against these offences in general, and also especially with respect to particular species of goods according to their several circumstances; almost all of which from the 5 & 6 Ed. 6. c. 14. and others downwards made for enforcing the same are repealed by the 12 G. 3. c. 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

But remain punishable at common law.

And at the common law all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Harw. c. 8c.*

By the common law a merchant bringing victuals into the realm may sell the same in gross: but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst. 196.*

The bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indict-
able

able at common law, whether any part thereof be sold by the ingrosser or not. 1 *Haw. c. 80. s. 3.*

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means, the market is in effect forestalled. *Id.*

By the statute of the 5 & 6 *Ed. 6. c. 14.* these offences were particularly described; which statute, though now repealed as aforesaid, yet may be of use as containing a parliamentary exposition of the respective terms denoting the several particular offences; and is as follows;

Whosoever shall buy or cause to be bought any merchandize, victual, or any other thing whatsoever, coming by land or by water toward any market or fair to be sold in the same, or coming towards any city, port, haven, creek, or road from any parts beyond the sea to be sold; or make any bargain, contract, or promise, for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing above mentioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed to any market, fair, city, port, haven, creek, or road to be sold as aforesaid — shall be deemed a forestaller.

Whosoever shall ingross, or get into his hands by buying, contracting, or promise taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful ingrosser.

And whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, utter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and shall sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrater.

It has been observed that notwithstanding the repeal of the 5 & 6 *E. 6.* the offences of forestalling, ingrossing, and regrating, remain punishable at common law; and indeed lamentable would be the plight of the public and of the state, were there no remedy against practices which have been justly

justly termed most heinous offences against religion and morality, and against the established law of the country.

In the case of *R. v. Waddington*, 1 *East's R.* 143. 145. which was ably argued at the bar, and well considered by the court, the following were declared to be among the offences at common law, and not done away by the repeal of the 5 & 6 *E. 6.* viz.

1. Spreading false rumours with intent to enhance the price of hops.

2. Endeavouring to enhance the price of hops by persuading dealers, &c. not to take their hops to market, and to abstain from selling for a long time.

3. Ingrossing large quantities of hops, by buying with intent to resell the same for an unreasonable profit, and thereby to enhance the price.

4. Getting into his hands large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to resell at an unreasonable profit, and thereby greatly to enhance the price.

5. Unlawfully ingrossing by buying large quantities, with like intent.

6. Ingrossing hops then growing, by forehand bargains, with like intent.

To forestall any commodity which is become a common victual and necessary of life, or is used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law. *R. v. Waddington, ante.*

Indictment must state the quantity.

An indictment for ingrossing "a great quantity," of fish, geese, and ducks, was holden bad; for the quantity of each ought to be specified. *R. v. Gilbert*, 1 *East's R.* 583.

Form of an indictment for forestalling.

Westmorland. *THE jurors for our lord the king upon their oath present, that A. O. late of* — in the county aforesaid, yeoman, *on the* — day of — in the — year of the reign of — at — aforesaid, in the county aforesaid, did buy and cause to be bought of and from one A. S. twenty oxen, for the sum of 200l. of lawful money of Great Britain, as he the said A. S. then and there was driving the said twenty oxen towards the market of M. to sell the said twenty oxen in the said market, and before the said twenty oxen were brought into the said market, where the same should be sold; in contempt of our said lord the king and his laws; to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Indictment for ingrossing.

Westmorland. *THE* jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one A. S., 50 quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Indictment for regrating.

Westmorland. *THE* jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforesaid, in the county aforesaid, to wit; in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens of and from one A. S. for the sum of 40s. of lawful money of Great Britain (the said geese and chickens then being brought to the said market by the said A. S. to be sold); and that afterwards, to wit, on the same ——— day ——— in the year aforesaid, he the said A. O. at ——— aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one A. B. for the sum of 40s. of like lawful money of Great Britain, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Forests. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.

[1 R. 3. c. 3.]

II. Of loss of dower.

[1 Ed. 6. c. 12. f. 17. — 5 & 6 Ed. 6. c. 11. f. 13.]

III. Of corruption of blood.

I. *Of forfeiture of lands and goods.*Forfeiture of
lands.

IT seems agreed that by the common law all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden by an attainder of petit treason or felony. 2 *Haw. c. 49. f. 1.*

But it seems clear that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process that the king hath had his prerogative of the year, day, and waste. *Id. f. 3.*

Concerning which year, day, and waste, it is enacted by the 17 *Ed. 2. c. 16.* that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king for the year, day, and waste.

Forfeiture of
goods.

As to forfeiture of goods, it seems agreed that all things whatsoever, which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath or is entitled to in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases;

(1) Upon a conviction of treason or felony. 2 *Haw. c. 49. f. 13.*

(2) Upon a flight found before the coroner, on view of a dead body. *Id. f. 14.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *Id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods as in case of grand larceny. 1 *H. H. 530.* 2 *Haw. c. 49. f. 14.*

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed that the particulars of the goods found to be forfeited may be also traversed. 2 *Haw. c. 49. f. 14.*

(5) Upon a presentment by the oaths of 12 men that a person arrested for treason or felony, fled from or resisted

those who had him in custody, and was killed by them in the pursuit or scuffle. *Id. f. 16.*

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. *Id. f. 17.*

(7) Also, a convict within clergy, forfeits all his goods, though he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately restored to the possession of his lands. 2 *H. H.* 389.

(8) If a person be found *felo de se*, he shall forfeit his goods and chattels, but not his lands. 3 *Inst.* 54. 5 *Co.* 109.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood's Inst. b. 4. c. 5.*

Forfeiture upon outlawry.

And those that tarry till the exigent in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a flight in law. *Id.*

But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493.

Forfeiture in *se defendendo*.

It seems agreed that the forfeiture, upon an attainder either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the land; but to the time of the conviction or flight found only, as to chattels; unless the party were killed in flying or resisting, in which case it is said that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw.* 454.

To what time the forfeiture shall relate.

But though the goods of an offender be not forfeited till the conviction or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which *L. Hale*, saith thus;

What is to be done with the felon's goods before forfeiture.

It seemeth clear that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer could not seize and carry away the goods of the offender or party accused.

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables or to the *villata*, to answer for them.

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being embezzled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance.

And possibly the same law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not.

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony.

And then as to the statute of 1 R. 3. c. 3. it is as follows ;

No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited ; on pain of double value to the party grieved.

Mr. Staundforde thinks this is but in affirmance of the common law, only that it gives a penalty ; but it seems to be somewhat more ; for this prohibits the seizure of the goods of a party imprisoned, tho' he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted.

But upon this statute these things are considerable ; 1. As to persons at large, it seems to me (says he), that if they fly not, there can be no seizure at all made, whether they are indicted or not ; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and fly for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie.

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, tho' imprisoned or not imprisoned, hath so far obtained notwithstanding this statute, that it passeth for law and common practice, as well by constables, sheriffs, and other the king's officers, as by lords of franchises, that there is nothing more usual.

Upon the whole, he says, that the opinion of my L. Coke, in his 3 *Inst.* 228., hath truly stated the law, at least as it stands

stands upon the statute of 1 R. 3. viz. 1. That *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away before conviction or attainder.

But then it may be said, to what purpose may they be searched and inventoried after indictment, if they may not be removed, but are equally liable to embezzling as before :

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them, (unless in case of a second *capias* on the 25 Ed. 3. c. 14.) for the prisoner or party indicted may sell them *bonâ fide*; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vender, tho' the goods had been delivered to them :

But there is this advantage by the viewing and appraising, that thereby the king is ascertained what the goods are, and may pursue them that take or embezzle them by information, (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration, to prevent the forfeiture. 1 H. H. 363, 4, 5, 6, 7.

II. Of loss of dower.

Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 Ed. 6. c. 12. f. 17.

Forfeiture of
dower in felony.

But on his attainder of treason, she shall forfeit her dower. 5 & 6 Ed. 6. c. 11. f. 13. But in some kinds of treason (particularly with regard to the coin,) there is a special saving of the wife's dower by statute.

In treason.

III. Of corruption of blood.

It is agreed that by an attainder of treason of felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 Harw. c. 49. f. 47.

Corruption of
blood.

Also, that he can neither inherit as heir to an ancestor, nor have an heir. *Id.* f. 48.

But the king's pardon, tho' it doth restore the blood, yet, as to issue born after, hath the effect of a restitution. 1 H. H. 358.

But restitution of blood, in its true nature and extent, can only be by act of parliament. 1 H. H. 358. 2 Harw. c. 49. f. 51.

Forgery.

Sect. I. *Of forgery at common law.*

II. *by statute.*

[25 G. 3. ft. 5. c. 2. — 1 M. ft. 2. c. 6. — 5 El. c. 11. f. 2, 3, 7, 8, 10. — 39 El. c. 17. f. 3, 4. — 7 An. c. 21. f. 9. — 2 G. 2. c. 25. f. 1. 5. — 7 G. 2. c. 22. — 18 G. 3. c. 18. — 41 G. 3. U. K. c. 39. — 45 G. 3. c. 89. and for the other statutes, *see post*, p. 412.]

III. *Of the indictment and evidence.*

I. *Of forgery at common law.*

FORGERY is an offence at common law, and an offence also by statute.

Forgery at the common law is an offence in falsely and fraudulently making or altering any manner of record, or any other authentic matter of a public nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw. c. 70. f. 1.*

The counterfeiting of any writing with a fraudulent intent, whereby another may be prejudiced, (it is immaterial whether the party be actually injured or not,) is also a forgery at common law.

Forging an order from one to charge certain goods contained in a schedule to his account, and to appropriate part of the proceeds to defendant's own use, &c. with intent to defraud, is forgery though no fraud be effected.

An information was filed by the attorney-general charging that the defendant *Ward* being bound to deliver 315 tons and a quarter of allum of the value of 1000l. to the duke of *Buckingham* at a certain day then past, he the defendant wickedly contriving and intending the said duke of the said allum to deceive and defraud, and with a wicked and fraudulent intent to avoid the delivery of the said allum, on, &c. at, &c. with force and arms, upon the back of a certain certificate in writing signed by one A. N. falsely forged and counterfeited, and caused to be forged and counterfeited, a certain writing in the words and figures following:

Schedule	{	Tons. C. } Mr. <i>John Ward</i> . I do hereby
	660 - 5	order you to charge the quan-
	315 - 5	tity of 660 tons and 1 quarter
	976 10	of allum to my account, part

of the quantity here mentioned in this certificate, and out of the money arising by the sale of the allum in your hand to pay to Mr. *W. Ward* and yourself 10l. for every ton according

ording to agreement ; and for your so doing this shall be your discharge. *Buckingham, April 30th, 1706.* To the evil example, &c. to the great damage of the said duke, and against the peace, &c. A second count charged him with publishing the same forged writing knowing it to be forged, &c. After conviction it was moved in arrest of judgment that the instrument set forth was not the subject of forgery at common law ; but at most the offence was only punishable as a cheat, and not in this form, being merely a thing of a private nature, and in effect nothing more than a letter ; and that if counterfeiting a letter had been punishable as a forgery at common law, then the making the *stat. 33 H. 8. c. 1.* to punish those who got money or goods of others under colour of false tokens or counterfeit letters was nugatory ; that it no where appeared that the duke had been prejudiced by this, which if he had, it might have been indictable as a cheat, but not as a forgery at common law.—But all the court held that this was indictable as a forgery at common law ; that none of the books confine the offence to the particular kinds mentioned in 3 *Inft.* 169. And that as forging a writing not sealed came within all the mischief of forging a deed, the maxim applied *ubi eadem est ratio eadem est lex* ; that this was recognized in the preamble of the *stat. 5 Eliz. c. 14.* which recites that the forging of writings “ as well as of deeds ” was punishable by law before that statute, but that offenders had been encouraged by the too great mildness of the punishments ; and that the 33 *H. 8. c. 1.* did not create new offences, but only enhanced the penalty where the fraud was executed. They also referred to several instances of indictments at common law for forging instruments not under seal, as a bill of lading, and acquittance, a warrant of attorney, a marriage register, a bill of exchange, letters of credit to gather money, and others of a similar kind ; and they distinguished this offence from cheats at common law and upon the 33 *H. 8. c. 1.* where the party received an actual prejudice, which was not necessary to constitute forgery ; it being sufficient if the party might be prejudiced by it. *R. v. John Ward, 2 Ld. Raym. 1461. 2 Str. 747. 2 East's P. C. c. 19. f. 7.* See also the case of *Leander Fawcett, 2 East's, P. C. Id.*

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says it hath been settled of late that they have no jurisdiction over forgery at the common law ; the principal reason of which resolution, (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespasses* in its most proper and natural sense is taken for such

kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw. c. 8. f. 38.* 1 *Salk. 406.* And this was confirmed in the case of *Micab Gibbs*, 1 *East's R. 173.* where it was determined that the sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognizance of it as a cheat.

But Mr. *Barlow* says, nevertheless, that it seemeth clear that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl. 244.*

II. Of forgery by statute.

See Pr. c. 35. l. 14. 5-50 l. 3 Ch. 4-

By 25 *E. 3. st. 5. c. 2.* To counterfeit the king's great or privy seal, is treason. And also by 1 *M. st. 2. c. 6.* falsely to forge or counterfeit the queen's sign manual, privy signet, or privy seal, is treason; and finally by 7 *Ann. c. 21. f. 9.* to counterfeit the seals used and continued in *Scotland*, according to the 29th article of the union, is treason.

The other statutes that make forgery an offence are these that follow:

The first is that famous statute of the 5 *El. c. 14.* which, by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause or wittingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the estate of freehold, or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same, may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false and forged, to the intent as above (except lawyers or attorneys for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action or the suit of the party, or otherwise, according to the order and due course of the laws of the realm, — he shall pay to the party double costs and damages, and be set upon the pillory in some open market town or other open place, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall

shall forfeit the profits of his lands during life, and be imprisoned also during life. 1. 2.

And all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences in this act. 1. 10.

Upon his own head] When the proceedings were in Latin, *super proprium suum caput* was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendered into proper Latin. 1 *Haw. c. 70. f. 26.*

Forge or make] Making a second deed, and antedating it, *Antedating* with intent to make it take place of a former deed, is forgery within this statute. 3 *Inst. 167.*

The very making, with a fraudulent intent, &c. of any instrument which at common law or by statute (a) law is the subject of forgery, is of itself a completion of the offence even before publication. 1 *Haw. c. 70. f. 27. Elliot's case. 2 East's P. C. c. 19. f. 44.* And in most instances by *Publication a. absc.* statute, publication, with knowledge of the forgery, is made *the offence.* a substantive offence.

Making a fraudulent insertion, alteration, or erasure, *Fraudulent insertion, alteration or erasure* in any material part of a true instrument, although in a letter only, and even if it be afterwards executed by another person he not knowing of the deceit; and the fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versa*, are as much forgeries as if the whole instrument had been fabricated; for any such alteration gives it a new operation. As by altering the date of a bill of exchange after acceptance, whereby the payment is accelerated. 2 *East's P. C. c. 19. f. 4.*

Expunging an indorsement on a bank note with a certain liquor (lemon juice) unknown to the jury, was holden to be *Expunging an indorsement* a rasing within the *stat. 8 & 9 W. 3. c. 20. R. v. Bigg, 3 P. W. 419; and 2 East's P. C. c. 19. f. 11.*

So is altering the amount of the sum for which a note, &c. *Altering the amount* is made. *Dawson's case and Teague's case, 2 East's P. C. c. 19. f. 55.*

Even though the alteration be made by the addition of a cypher o; as in *Elsworth's case*, where the o being added after the figure 8, the bill which was for 8l. became a bill for 80l. *ib. f. 58.*

(a) Tho' many of the cases in this chapter do not immediately belong to the particular statute under the reference to which they are placed, yet as they belong to the same subdivision of matter, they are thus introduced.

In *R. v. Kinder* (Nottingham Sum. Ass. 1800) it appeared that the prisoner procured a deed to be forged from *J. M.* and his son, conveying an estate for life to *Mary Kinder*, and that after the death of one of the supposed grantors he procured the forged deed to be altered by enlarging the grantee's estate to a fee: he was indicted and convicted for forging and uttering it in the state to which it was so altered; and it was holden by all the judges that the conviction was proper; for it was no less a forgery after than before such alteration. 2 *East's P. C.* c. 19. f. 4.

See Vol. P. 505

But it is not forgery to pass for the person whose indorsement is on the bill, and thereby to obtain credit in the name of another; for in such a case it is not a false making. It is however an indictable offence within 30 G. 2. c. 24. for using a false pretence. *R. v. J. Hevey.* *Ib.* f. 5.

It is forgery however for a person, having the same name as the payee of a bill of exchange, and knowing that he is not the real person in whose favor it was drawn, to indorse it with intent to defraud, &c. *Mead v. Young.* 4 T. R. 29.

*Using the name of
a non-existing person
See P. 486.*

C. Lockett's case

So making a false instrument, which is the subject of forgery, though in the name of a non-existing person, is as much a forgery as if it had been made in the name of one who is known to exist and to whom credit was due. *Anne Lewis's case.* *Fost.* 116.; and *G. Wilks's case.* *Bodmin* 1767. 2 *East's P. C.* c. 19. f. 46.; and *Taft's case.* *ib.* f. 47.

Or subtilly cause, or willingly assent] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement or counsel, and such is in law a procurer. 3 *Inst.* 169.

But *L. Hale* says, that an *assent* after the fact is committed makes not the party assenting guilty of principal in the forging; but it must be a precedent or concomitant assent. 1 *H. H.* 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for it would be of validity or not; and upon this ground it hath been adjudged that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* c. 70. f. 7.

*Forging the will of
a person still living*

So it is a capital offence within the *stat.* 2 G. 2. c. 25. to forge the will of a person who is still living. *R. v. Coogan.* 2 *Leach.* 503; and 2 *East's P. C.* c. 19. f. 43.

So forgery may be committed of a bill of exchange on unstamped paper. *Hawkerwood* being indicted for forgery of a bill of exchange, it was objected that not being stamped it

it was no bill of exchange by the *stat. 22 G. 3. c. 33.* and prior acts; and that this was an objection apparent upon the face of it. But as the stamp act was merely a revenue law, and did not profess in any way to alter the crime of forgery; and as the false instrument had the semblance of a bill of exchange, and was negotiated by the prisoner as such, *Buller J.*, before whom he was tried, overruled the objection, but respited judgment. And in *Easter* term 1783, all the judges were of opinion that the prisoner was properly convicted; for the stamp act in saying that a bill without a stamp shall not be pleaded or given in evidence, or be available in law or equity, means only that it shall not be made use of to recover the debt; and besides the holder might get it stamped. 1 *Leach* 292.; and 2 *Easf's P. C. c. 19. f. 45.*

The same point was afterwards ruled by all the judges in *R. v. Morton (York Sum. Ass. 1795)* after the passing of the *stat. 31 G. 3. c. 25.*, which prohibits the affixing of the stamp afterwards. *Ib.*

The decision in this case also guided the determination in two other cases. *Ib.*

But in these cases it is necessary that the forged instrument should in all essential parts have upon the face of it the similitude of a true one; so that it be not radically defective and illegal in the very frame of it.

Therefore where *T. Wall* was indicted for forging a will of land of one *J. S.*, attested by only two witnesses, and it did not appear in evidence what estate the supposed testator had in the land so devised, or of what nature it was; it was objected that *non constat* but that the land was freehold, and therefore the will void by the express words of the statute of frauds (29 *Car. 2. c. 3. f. 5.*) for want of the attestation of three witnesses. The prisoner was convicted: but the judges on a conference in *Easter* term 1800; held that the conviction was wrong; for as it was not shewn to be a chattel interest, it was to be presumed that it was freehold. *Ib.*

So in *R. v. Mostatt (O. B. Jan. 1787)* it was decided by all the judges that forgery of a bill of exchange, as such, cannot be committed, when it is drawn for more than 20s. and less than 5l. without mentioning the place of abode of the payee, and having a subscribing witness thereto; for want of which circumstances it is declared by the *stat. 17 G. 3. c. 30. f. 1.* that such a note is absolutely void. *Ib.*

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted

mitted by the lord of the manor, which was also false, was resolved to be within these words a *false writing sealed*. 3 Inst. 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression, is not a seal. 3 Inst. 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 Inst. 170.

Will] If any person which writeth the will of a sick man inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, although he did not forge the whole will. 3 Inst. 170.

To the intent that the estate of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same, may be molested, troubled, defeated, recovered, or charged] E. 4 G. 2. R. v. *Japhet Croske*. The defendant was convicted on this statute for forging a lease and release. And the indictment set forth that *Garbut* and his wife were seized in fee of certain messuages, lands, and tenements, called *Jarwick*, in the parish of *Clackton* in *Essex*, and that the defendant, intending to molest them and their interest in the premises, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him “all that park called *Jarwick* park, in the “parish of *Clackton* in *Essex*, containing eight miles in circumference, with all the deer, woods, &c. thereto belonging.” It was moved in arrest of judgment that the premises supposed to be conveyed were so materially different from those which were really the estate of *Garbut* and his wife, which were houses, lands, and tenements, that it was impossible this conveyance ever could molest or disturb them. If it were a true deed, it could not pass their lands at law, for want of a proper description; and though where lands are improperly described, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a sale, and they do it as carrying that contract into execution. The court for several terms inclined strongly with the objection: but this term *Raymond*, Ch. J. declared that they were all of opinion to overrule it; for by the words of the act it is not necessary that there should be a charge or a possibility of a charge. It is sufficient that it be done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king; and the defendant had

sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at *Charing Cross*. 2 Str. 901. *Fitzg.* 27. 261.

Pronounce or publish] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. 3 *Inst.* 171.

But *L. Hale* says, that tho' such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible; so that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *H. H.* 685.

In *R. v. Wylie* and another at the *O. B. Apr.* 14. 1804. The prisoners were indicted for disposing of and putting away a forged bank note, for 11. knowing the same to be forged. In order to shew the knowledge of the prisoners that the note was forged, evidence was offered that the prisoners had passed other forged notes to other persons: And to this evidence the counsel for the prisoners objected, as being inadmissible; because, they said, upon indictments for burglary or robbery, previous offences were not allowed to be given in evidence to prove the *quo animo*; nor upon an indictment for uttering bad money; and they said that the prisoners ought to have had notice of the several utterings intended to have been proved against them. Lord *Ellenborough*, C. J. said that in *R. v. Tattershall* (tried at *Lancaster* 1801, by Mr. J. *Chambre*) it was held by all the judges, that the jury might from the conduct of the prisoner on one occasion infer his knowledge on another. And he said, "I remember a case in which a person came to *Manchester* with a large parcel of forged notes; his whole demeanor afforded pregnant evidence of the mind and purpose for which he came; and a question was made whether that evidence should be received; for it was said, that it would be trying the prisoner for other utterings. But if crimes do so intermix, the court must go through the detail. I remember a case where a man committed three burglaries in one night; he took a shirt at one place, and left it at another; and they were all so connected, that the court went through the history of the three burglaries. The more detached in point of time the previous utterings are, the less relation they will bear to that stated in the indictment. But in such case, the only question

question would be, whether the evidence was sufficient to warrant the inference of knowledge from such particular transactions? It would not make the evidence inadmissible. Such evidence may come out from these circumstances as may leave no doubt that the prisoners must have known what sort of paper they were passing. Under the authority therefore of the decision which has already taken place, I think that it is competent for us to go into and receive evidence of another offence, and of the demeanor of the prisoners on other occasions, from which knowledge may be inferred. *Heath J.* agreed, and said he remembered a case where several persons were tried for a conspiracy to raise wages, and evidence was received of circumstances amounting to substantive felonies, such circumstances being material to the point in issue. *Thompson B.* agreed, and said that as to uttering of bad money, the prosecutor could give evidence of another uttering on the same day, in order to prove the knowledge. The evidence was received and the prisoners were found guilty. 1 *New Reports*, 92.

So also in *R. v. Edward Ball*, 48 G. 3. 1808. Evidence was admitted of the prisoner's having passed off another forged note of the same manufacture, and that several of the same manufacture had been paid into the bank of *England* with indorsements upon them in his hand-writing. And upon argument before all the judges, they were of opinion that this evidence was properly received for the purpose of proving that the prisoner uttered notes *knowing* them to be forged (for which crime he stood indicted). 1 *Campbell's Reports*, 324.

[*Justices of oyer and terminer*] Albeit justices of the peace, by their commission, have power to hear and determine felonies and trespasses, yet they are not included under the name of justices of oyer and terminer; for justices of oyer and terminer are known by one distinct name, and justices of the peace by another. 3 *Inst.* 103.

And by the same statute it is further enacted, that if any person, upon his own head or imagination, or by false conspiracy or fraud with any other, shall wittingly, subtilly, and falsely forge or mark, or cause or assent to be made and forged any false charter, deed, or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee simple, fee tail, or for term of life, lives, or years, or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true knowing the same to be false and forged; he shall, on conviction in like manner, pay to the party double costs and damages, and

and be set on the pillory, and have one of his ears cut off, and be imprisoned for a year. f. 3.

Obligation, or bill obligatory] The forgery of a deed of gift of mere personal chattels is not within this statute. 1 *Haw. c. 70. f. 21.*

And if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishment. f. 6.

By the same statute it is further enacted, that if any person shall after conviction offend again in any of the ways above mentioned, he shall be guilty of felony without benefit of clergy. f. 7, 8.

Thus stood the matter upon the statute of 5 *El.* And the 39 *Eliz. c. 17. f. 3 & 4.* makes it felony without benefit of clergy in wandering soldiers and mariners to forge the testimonial of a justice of the peace as to the place of his landing, the place of his dwelling or birth, &c. and empowers justices of assize, and gaol delivery, and justices of the peace, to hear and determine such offences, and to execute the offenders. Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject,) divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them. Such are these that follow;

It shall be felony, without benefit of clergy, to forge or counterfeit.

(1) Any bank bills or notes, or the seal of the governor and company of the bank of *England.* 7 & 8 *W. c. 31. f. 36.* *See Pr. St. 504. Ch. 4.* 8 & 9 *W. c. 20. f. 36.* 11 *G. c. 9. f. 6.* 12 *G. c. 32. f. 9.*

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. 15 *G. 2. c. 13. f. 12.*

The 13 *G. 3. c. 79.* & 41 *G. 3. (U. K.) c. 39.* respect the having in the possession of the party instruments for making paper with certain words concerning the bank, or to resemble the bank paper; and also the having in possession forged bank notes, or engraving such on any plate.

The 52 *G. 3. c. 138. f. 5. & 6.* contain further provisions upon the same subject.

(2) *India bonds.* 12 *G. c. 32. f. 9.*

(3) Bonds, receipts, warrants, or seal of the *South Sea* company. 9 *An. c. 21. f. 57.* 6 *G. c. 4. f. 56.* 6 *G. c. 11. f. 50.* 12 *G. c. 32. f. 9.*

(4) Exchequer bills; by the several acts which direct the issuing of the same.

(5) Any

(5) Any power to transfer stocks. 8 G. c. 22. f. 1. or personating the owners thereof. 31 G. 2. c. 22. f. 77. 4 G. 3. c. 25. 33 G. 3. c. 30. 37 G. 3. c. 122.

(6) *Irish* annuities transferable and payable in *England*, 37 G. 3. c. 46. and debentures 42 G. 3. c. 58. f. 20.

(7) Lottery tickets and orders; by the several lottery acts.

(8) The common seal or policies of *The London or Royal Assurance Companies*. 6 G. 3. c. 18. f. 13. & 14 G. 2. c. 37.

(9) Documents concerning money of the suitors, &c. in chancery. 12 G. c. 32. f. 9.

(10) Seamen's wills, [letters of attorney, &c.] 31 G. 2. c. 10. f. 24.

(11) Tickets for wages of seamen or marines. 1 G. 1. f. 2. c. 25. 32 G. 3. c. 33. f. 23.

(12) Petitions for certificates to administer to seamen, &c. *Id.* f. 34.

(13) Mediterranean passes. 4 G. 2. c. 18.

(14) Army debentures. 5 G. c. 14. f. 10.

(15) Marriage licenses or registry of a marriage. 26 G. 2. c. 33.

(16) Stamps on vellum, parchment, and paper, and legal writings, by the several stamp acts. *Vide* 27 G. 3. c. 13. f. 46. 37 G. 3. c. 90. f. 5. 41 G. 3. c. 86. f. 16. 52 G. 3. c. 143. f. 7.

(17) Stamps on linen imported. 10 *An.* c. 19. f. 97.

(18) Prefines and postfines in passing fines in *C. P.* 32 G. 2. c. 14. 52 G. 3. c. 143. f. 5.

(19) Exchequer bills. 42 G. 3. c. 1. f. 41. 48 G. 3. c. 1. f. 9.

(20) Any stamp or seal, &c. &c. of the commissioners of the excise or customs. 13 G. 3. c. 56. 14 G. 3. c. 72. 26 G. 3. c. 78. f. 13. 26 G. 3. c. 51. f. 14. 9 *An.* c. 11. f. 44. 10 *An.* c. 19. 27 G. 3. c. 31. f. 13, 14. 23 G. 3. c. 70. f. 9. 27 G. 3. c. 32. f. 14.

(21) The seal of the *British* Cast Plate Glass Manufactory, or any deed or writing under their common seal, &c. 13 G. 3. c. 38. f. 28. 38 G. 3. c. 17. f. 23.

(22) Franks of letters. 24 G. 3. f. 2. c. 37. f. 9. 42 G. 3. c. 63. f. 14.

(23) Contracts, certificates, &c. relating to the redemption of the land tax, &c. 42 G. 3. c. 116. 52 G. 3. c. 143. f. 6.]

(24) Forging draft on receiver general. 46 G. 3. c. 150.

(25) Drafts of the treasurer of the ordnance, or his deputy, or person duly authorized by him. 46 G. 3. c. 46. f. 9.

(26) Name or hand-writing of the receiver general of the excise, or comptroller of the excise, or person duly autho-

authorized by them to any draft, instrument, or writing, for the receiving of money. 46 G. 3. c. 75. f. 8.

(27) Receiver general of the stamp duties, &c. (the same). 46 G. 3. c. 76. f. 9.

(28) Surveyor general of the woods and forests (the same). 46 G. 3. c. 142. f. 14.

(29) Receiver general of the customs, or supervisor duly authorized, (the same.) 46 G. 3. c. 150. f. 10.

(30) Certificates. 47 G. 3. f. 1. c. 55. f. 8. 49 G. 3. c. 92. f. 5.

(31) Registers. 48 G. 3. c. 142. f. 27.

(32) Contracts. 42 G. 3. c. 116. f. 194.

(33) Quarantine, orders of council. 46 G. 3. c. 98. f. 8. And see also the several heads for other forgeries.

And besides these (and other like) particular laws, in the 2 G. 2. a general law was made, (for five years, and was afterwards revived and made perpetual,) by which it is

enacted, that if any person shall falsely make, forge, or counterfeit, *See Pr. St. 506.3*

or willingly act or assist in the false making, forging, or counterfeiting, any deed, will, testament, bond, writing obligatory, bill

of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment

of money, acquittance or receipt either for money or goods, with intent to defraud any person; or shall utter or publish the same as

true with such intent, knowing the same to be false, forged, or counterfeited; he shall be guilty of felony without benefit of clergy;

but not to work corruption of blood, loss of dower, or disherison of heirs. 2 G. 2. c. 25. f. 1. 5.

And by the 7 G. 2. c. 22. and 18 G. 3. c. 18. it is further enacted, by way of addition to the foregoing, that if any

person shall falsely make, alter, forge, or counterfeit, or willingly act or assist in the false making, altering, forging, or counterfeit-

ing, any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other

security for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person or

corporation; or shall utter or publish the same as true, with intent to defraud any person or corporation, knowing the same to be false,

altered, forged, or counterfeited; he shall be guilty of felony without benefit of clergy: And this without any saving of the

corruption of blood, or disherison of heirs.—And these acts, together with the 41 G. 3. U. K. c. 39., were further

altered and enlarged by the 45 G. 3. c. 89. f. 1. extending them to deeds, wills, testaments, bonds, writings obligatory,

bills of exchange, promissory notes for payment of money, indorsement, or assignment of any bill of exchange, or prom-

issory note for payment of money, acceptance of any bill

of exchange, acquittance or receipt, either for money or goods, accountable receipt for any note, bill, or other security for payment of money, warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate.

R. v. Treble, E. T. 50 G. 3. Treble was convicted of uttering and disposing and putting away as true a certain false, forged, and counterfeited promissory note of the following tenor. "I promise to pay the bearer on demand ten pounds here or at Messrs. *Ramsbottom, Newman, Ramsbottom, and Co.* bankers, *London. Fordingbridge*, the 1st day of *July 1808.*" "For *Francis, John, and James Kellarway, John Kellarway.*" With intent to defraud *Samuel Hawkins and Henry Phillips*, Messrs. *K.* and Messrs. *R. and Co.* respectively. The evidence was, that the prosecutors Messrs. *K. and Co.* were bankers residing at *F.* in *Hampshire*, from whence they issued their re-issuable notes originally made payable to bearer on demand, there or at the banking house of *B. and Co.* in *London*. About the 14th of *September 1809*, upon the failure of that house, the prosecutors appointed another banking house in *London*, (that of Messrs. *R. and Co.*), at which their notes were thenceforward to be paid, and caused an engraving to be made, containing merely the words "*Messrs. Ramsbottom and Co.,*" and having printed these words on small narrow slips of paper, they covered the words in their notes "*Sir Matthew Bloxham and Co.*" with these slips of new printing which they fastened on with gum water. In *June 1809*, Messrs. *B. and Co.* having paid for the prosecutors a number of these notes amounting to about £730, made them up into a paper parcel directed to the prosecutors at *F.* The parcel never reached the prosecutors hands. It appeared that the note in question was one of these lost notes, of which many were found in the possession of the defendant, who passed it off, having a slip of paper bearing the words *Ramsbottom and Co.* pasted over the words *Bloxham and Co.*, in like manner as the prosecutors had altered their other notes.

For the defendant it was objected that this alteration did not amount to the offence of forgery. Sentence of death was afterwards passed on the prisoner, and at the *Suffex Lent Assizes 1810*, Lord *Ellenborough C. J.* delivered the opinion of the court. The judges held "that the act done by the prisoner was a false making, in a circumstance material to the value of the note, and its facility of transfer, by making it payable at a solvent instead of an insolvent house." 2 *Taunton*, 328.

[*Receipt for money*] *W. Teslick* was indicted for uttering and publishing as true a forged receipt for money with the name

name *S. W. &c.* for 11. 4s. which was as follows, viz. "18th March 1773, received the contents above by me, "*S. Withers,*" with intent to defraud *R. Goadby, &c.* It appeared that the prisoner was employed by *Goadby*, who sold lottery tickets and shares, and paid the money for prizes to settle an account with *S. Withers*; that a precise account in writing was given by *Goadby* to the prisoner, in which there was a balance of 11. 4s. due to *Withers*, with the money to pay that balance; that the prisoner afterwards on settling his accounts with *Goadby*, produced this very account, together with the receipt stated in the indictment, which was not signed by *Withers*, and took credit for the amount, knowing that *Withers* had not been paid. It was objected that this receipt did not correspond with the indictment, which should have contained the bill as well as the receipt; and that the receipt, as set forth, of "the contents above" did not appear to be a receipt for the bill in question, or to be a receipt for money. After conviction judgment was respited; but in *Michaelmas* 1774, the judges were of opinion that the indictment was sufficient, for it was "received the contents above," which shewed it to be a receipt for something though the particulars were not expressed; it was laid to be a forged receipt for money under the hand of *S. W.* for 11. 4s.; and the bill itself was only evidence of the fact, and shewed it to be a receipt for money as charged. 2 *East's P. S. c.* 19. f. 36.

But in the case of *W. Hunter* (*East. Term* 1796) who was indicted for forging a receipt to an assignment for payment of a certain sum in a navy bill, the judgment was arrested because it did not appear on the face of the instrument, nor was shewn by any averment, that the instrument was a receipt for money. *Ib.* and 2 *Leach*, 711.

In *Lyon's* case it was ruled by all the judges, that a scrip receipt with a blank for the name not filled up with the name of the subscriber, and therefore not professing to be a receipt of the sum therein mentioned from any person, was not a receipt for money within the statutes. 2 *Leach*, 681. and 2 *East's P. C. c.* 19. f. 36.

Warrant or order for payment of money or delivery of goods] If the warrant or order, mentioned in the *stat. 7 G. 2. c. 22.* do not purport on the face of it, nor be shewn by a proper averment, to be made by a person having authority to command the payment of the money or direct the delivery of the goods, but only amount to a request to advance the money or supply the goods on the credit of the party applying, it is not a warrant or order within the statute. *Mary Mitchell* was indicted for publishing and uttering this forged warrant and order; "Mr. *Jeffreys*, I desire you to let this woman

have six yards of ordinary stuff, one pair of stockings, one shift, one apron, one handkerchief, and I will see it all paid for. Witness my hand, *G. May*;" with intent to defraud *W. Jeffreys*. The prisoner pretending to be entitled to parish relief, went to *Jeffreys's* shop with the order, saying she had brought it from *May*, and desiring him to let her have the articles on the credit of it. After conviction judgment was respited; and on a conference among the judges in *July* 1754, nine of them were clearly of opinion that the writing was not a warrant or order for the delivery of goods within the statute; considering that the words "warrant or order," as they stand in the act, are synonymous, and import that the person giving such warrant or order has or at least claims an interest in the money or goods which are the subject matter of it, and has or at least assumes to have a disposing power over them, and takes on him to transfer the property or at least the custody of them to the person in whose favour such warrant is made. And though this case must fall within the mischief, yet in the construction of an act so penal the strict letter of it ought not to be departed from. *Fost.* 119.

On the authority of that case a similar determination was made in 1775, in *William's* case, though most of the judges said they should have doubted the propriety of the former case had it been *res integra*; but it having been so long acquiesced in, they thought it could not be departed from. 2 *East's P. C. c.* 19. *f.* 37.

The same point was afterwards ruled in *Elliott's* case, and *Clinch's* case; in which latter case it was also holden that a warrant of this kind must be directed to some person in particular. *Ib.*

But if it purport to be an order which the party has a right to make, although in truth he has no such right, and though no such person exists, as he who is supposed to have made it, it comes within the act. *C. Lockett* was convicted of knowingly uttering a forged order for the payment of money in these words; "Messrs. *Neale, Fordyce, and Down*, pay to *Wm. Hepwood* or bearer 10l. 10s. 6d. *R. Venneft*;" with intent to defraud *John Scoles*. The prisoner applied to *Scoles* a colourman, and agreed to purchase goods to the amount of 10l. 6d. which he was to send for; and he took away with him a little *Prussian* blue. He came again, pretending to be in a hurry, and presented this note, which he said was a good one; and *Scoles* gave him 6l. 10s. being the difference. No such person as *R. Venneft* kept cash at Messrs. *Neale and Co.*, nor did it appear that there was any such man existing. The question submitted to the judges was, whether this were an order within the statute, being in the name

name of a fictitious person? the doubt arising on what is said in *Mitchell's case*. The judges after very long consideration at last agreed in *Trin. Term 1774*, that this was forgery. They thought it quite immaterial whether such a man as *Venneſt* existed or not; or if he did, whether he had kept cash at the banking house of Messrs. *Neale and Co.* it was sufficient that the order assumed those facts and imported a right on the part of the drawer to direct such a transfer of his property. 1 *Leach*, 110. 2 *East's P. C. c. 9. f. 38*.

But in these cases it is not necessary to specify the particular goods in the order, provided it be conceived in terms intelligible to the parties themselves to whom it is addressed. *Jones's case*. 1 *Leach*, 63. 2 *East's P. C. c. 19. f. 39*.

Nor is the statute confined to orders or warrants in commercial transactions. In *R. v. M^cIntosh*, *ib.* an order for payment of prize money, and in *R. v. Graham*, *ib.* a forged order of a magistrate upon the constable of a division, or the treasurer of the county, to pay a reward of 10s. to the prisoner for apprehending a vagrant under the stat. 17 G. 2. c. 56. f. 5. were holden to be orders within the meaning of the 7 G. 2.; though in the latter case, the 18th sect. of the act subjects the party forging such order to a penalty of 50l.

A bill of exchange may be stated as an order for payment of money. In *R. v. Shepherd* the forged instrument, which was set out, was precisely in the form of a bill of exchange, and in the indictment it was stated to be an order for payment of money.

It was objected that it ought to have been laid to be a bill of exchange. But in *Michaelmas Term 1781* the judges were unanimously of opinion that it was properly laid. It was observed that the indictment and the draft were the same as in *Lockett's case* (*supra*) where all the judges held the conviction proper; and that every bill of exchange seemed to be an order for payment of money, though not *vice versa*. 1 *Leach*, 265. 2 *East's P. C. c. 19. f. 40*.

[*With intent to defraud any person or corporation*] The intent to defraud and the party to be defrauded must be stated in the indictment; and the proof must agree with such allegation. But it need not state the manner in which the party is to be defrauded; for that is matter of evidence. *R. v. Powell*, 2 *Bl. Rep.* 787. 2 *East's P. C. c. 19. f. 53. & 59*.

The stat. 7 G. 2. c. 22. was confined to those cases where the forgery was committed with intent to defraud individuals and not corporate bodies. *R. v. Harrison*, O. B. 1777. 2 *East's P. C. c. 19. f. 59*. and therefore the stat. 18 G. 3. c. 18. was passed to remedy this defect.

III. *Indictment and evidence.*

It is necessary to set forth in the indictment the instrument forged in words and figures. *R. v. Mason*, 2 *East's P. C. c.* 19. *f.* 53.

It is sufficient if it be set forth in words and figures, after the words "as follows," without saying "according to the tenor following." *R. v. Powell. Ib.*

So it is sufficient to describe the instrument as "a paper writing, &c. purporting to be such an instrument," &c. *R. v. Birch and Martin. Ib. f.* 56.; and 2 *Bl. Rep.* 790.

But the word *purport* imports what appears on the face of the instrument; and therefore if it be stated in the indictment that the instrument *purports* to be so and so, and the instrument when set forth does not accord with what it is said to *purport*, it is bad.

In *Jones's* case in 1779 the instrument was described to be a paper writing *purporting to be a bank note*; but the court were of opinion that as it did not *purport* on the face of it to be a bank note, the indictment could not be supported; and that this defect could not be supplied by the representations made by the party when he passed off the note. *Dougl.* 300.

So in *J. Reading's* case 1793, where the indictment charged that the prisoner being possessed of a bill of exchange, *purporting to be directed to J. King*, by the name, &c. of *J. King*, forged the acceptance of the said *J. King*, judgment was arrested, because the bill did not *purport* to be drawn on *J. King*, as stated in the indictment. And *Buller J.* in delivering the opinion of the judges at the Old Bailey, observed that the indictment, as drawn, was absurd and repugnant in itself; for the name and description of one person, or thing, could not *purport* to be another. 2 *Leach*, 672. and 2 *East's P. C. c.* 19. *f.* 56.

Again in *Gilchrist's* case, the indictment was for forging "a paper writing, purporting to be an order for payment of money, dated &c. with the name *Thos. Exon* thereunto subscribed, *purporting to have been signed by Thos. Exon* clerk, and to be directed to *George Lord Kinnaird, Wm. Moreland, and Thomas Hammersley*, of, &c. bankers and partners, by the name and description of *Messrs. Ransom, Moreland, and Hammersley*, for the payment of the sum of 10l., &c.;" the tenor of which said false writing &c. is as follows, viz. *Messrs. Ransom, Moreland, and Hammersley*, please to pay to *Mr. Brooks* or bearer the sum of ten pounds for *Thos. Exon*; with intent to defraud the said *George Lord Kinnaird, &c.* A motion was made in arrest of judgment, and upon a conference with the

judges in *Easter Term* 1795, it was resolved by ten judges present, that the judgment should be arrested, because the word *purport* imports what appears on the instrument itself. It means the *apparent* and not the *legal* import. And that this bill of exchange could not purport to be directed to Lord *Kinnaird*, because his name did not appear on the face of the bill. 2 *Leach*, 753.; and 2 *East's P. C. c.* 19. *f.* 56.

And these determinations have been acted upon in various subsequent cases.

But a merely literal variance is not fatal; as in *Hart's case*, where the word was written in the indictment "received," and it was "reicevd" in the bill of exchange itself. 2 *East's P. C. c.* 19. *f.* 54.

Fornication. See *Lewdness*.

Frame work.

Sect. I. *Frame work knitters.*

[6 G. 3. c. 29.]

II. *Frame work breakers.*

[52 G. 3. c. 16.]

I. *Frame work knitters.*

ALL frame work knitted pieces and stockings, made of thread, cotton, worsted, or yarn, or any mixture of any or all the said materials, or of any other materials, except such as shall be made of silk only, which shall contain three or more threads, shall be marked with the same number of ilet-holes, and no more, as there are threads contained in each piece or pair; and such ilet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme ilet-holes: and no such ilet-holes shall be made or placed within the distance of four inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ilet-holes shall be made within four inches of the top or end of every such piece or pair; and no ilet-hole, or imitation thereof, shall be made or put in any frame work knitted piece or pair of stockings, upon any account whatsoever, except as herein-before directed. 6 G. 3. c. 29. *f.* 1.

Pieces to be marked.

Provided, that nothing herein shall prevent any manufacturers from using remnants, or materials of any sort, in the welts and tops of stockings only, at any distance not exceeding three inches from the top, although the same

shall not contain so great a number of threads as are contained in the legs of such stockings. *f. 2.*

Penalty on not marking.

If any master frame work knitter, or master hosier, or any other person, shall make or work, or cause or procure to be made or wrought, any frame work knitted goods of any the materials aforesaid, or any mixture thereof (except such as shall be made of silk only), without being so marked; he shall forfeit the same, and also 5*l.* for each piece of such frame work knitted goods, or pair of stockings. *f. 3.*

Provided that the said penalty of 5*l.* shall not extend to any journeyman, apprentice, servant, or person not making such goods or manufactures on his own account: But such person offending herein shall forfeit not exceeding 40*s.* nor less than 5*s.* for each piece or pair; but if he can prove that the goods by him unduly marked were so marked by direction of his master, or the person by whom he was employed, in which case he shall not be subject to any penalty. *f. 4, 5, 6.*

Selling unmarked goods.

And if any frame work knitter, hosier, or other person shall sell or expose to sale any of the said goods, not duly and truly marked as aforesaid, he shall forfeit the same, and also 5*l.* for each piece or pair. *f. 7.*

Provided, that if the person prosecuted for selling or exposing the same to sale, shall discover the vender or seller thereof, so as he may be convicted; such person shall be discharged from any penalty or forfeiture inflicted by this act. *f. 8.*

Penalties how to be recovered.

One justice where the offence shall be committed (not being a frame work knitter, hosier, or proprietor of frames,) may convict the offender, on the oath of one witness: And if on such conviction the penalties or forfeitures shall not be forthwith paid, the said justice shall issue his warrant to levy the same by distress, rendering the overplus, if any; and if no goods, or not sufficient, can be found, such justice shall, on oath thereof made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence shall be committed for any time not exceeding three months, unless the penalties and forfeitures shall be sooner paid and satisfied: All which penalties and forfeitures shall be applied half to the informer and half to the poor. *f. 9.*

Appeal.

Persons aggrieved may appeal to the sessions, giving ten days notice in writing of his intent to the justice, and within two days after notice entering into recognizance before a justice with two sureties to try the appeal at such sessions: And the justices there, on due proof of such notice and recognizance, shall hear and determine the same, and award costs to either party, as they shall think fit, and their deter-

determination shall be final, binding, and conclusive to all intents and purposes. *f.10.*

Provided, that nothing herein shall extend to abridge or take away any rights or privileges of the master, wardens, and assistants of the company of frame work knitters. *f.12.*

II. *Frame work breakers.*

By the 52 G. 3. c.16. reciting that the provisions of the 28 G. 3. c.55. had been found ineffectual; it is enacted, that if any person shall, by day or by night, enter by force into any house, shop, or place, with an intent to cut or destroy any frame work knitted pieces, stockings, or lace, or other articles or goods being in the frame, or upon any machine or engine thereto annexed, or therewith to be used or prepared for that purpose; or with an intent to break, or destroy any frame, machine, engine, tool, instrument, or utensil, used in and for the working and making of any such frame work knitted pieces, stockings, lace, or other articles or goods in the hosiery or framework knitted manufactory; or shall wilfully and maliciously, and without having the consent or authority of the owner, destroy, or cut with an intent to destroy, or render useless, any frame-work knitted pieces, stockings, lace, or other articles or goods, being in the frame, or upon any machine or engine as aforesaid, or prepared for that purpose; or shall wilfully and maliciously, and without having the consent or authority of the owner, break, destroy, or damage with an intent to destroy, or render useless any frame, machine, engine, tool, instrument, or utensil used in and for the working and making of any such frame work knitted pieces, stockings, lace, or other articles or goods in the hosiery or frame work knitted stocking, or frame work lace manufactory; or shall wilfully and maliciously, and without having the consent or authority of the owner, break or destroy any machinery contained in any mill or mills used or any way employed in preparing or spinning of wool or cotton, or other materials for the use of the stocking or lace manufactory, every offender being thereof lawfully convicted shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

And by *f.2.* every person in whose house or custody, or possession, any frame, machine, or engine, tool, instrument, or utensil, used in and for the working and making of any frame work knitted pieces, stockings, lace, or other articles or goods in the hosiery or frame work knitted stocking, or frame

Cutting or destroying frame-work knitted pieces, &c. or machines used in such manufacture, felony.

Under Prov Statute

43 Geo 3 Statute

43 Geo 3

Persons in whose house or custody frames, machines or engines are destroyed, to give notice to owners,

and go before a
magistrate.

frame work lace manufactory as aforesaid (not being his property) shall be at the time of the destruction or damaging thereof, or of any frame work knitted pieces, stockings, lace, or other articles or goods, being in the frame, or upon any machine or engine as aforesaid, and who shall not, within 24 hours after he shall have known of such destruction or damage being committed as aforesaid, give notice thereof to the owner of such frame, machine, or engine, tool, instrument, or utensil, as aforesaid, if residing within 12 miles, or if such owner shall not reside within such distance, then to some known agent of such owner, if any such agent shall reside within the distance of 12 miles; and also within 48 hours, go before some justice of the peace, or magistrate residing near the place where such destruction or damage shall have taken place as aforesaid, to be examined upon oath, as to every matter relating to the committing of such destruction and damage, and his knowledge thereof, and of all particulars relating thereto, which may lead to the discovery of the offender therein; every such person shall, for every such neglect, be deemed guilty of a misdemeanor; and every such offender, being thereof lawfully convicted upon any indictment or information, may be punished as in cases of misdemeanor, by fine and imprisonment, at the discretion of the court in which he shall be convicted; and every justice of the peace or magistrate before whom any such person shall so go, shall examine such person upon oath as to his knowledge of such damage or destruction, and of the persons committing the same, or of any particulars which may lead to the detection of the offenders therein; and shall also allow the owner of the frame, machine, or engine, tool, instrument, or utensil, as aforesaid, or agent if present, to put any question upon oath to such person for the discovery of the offender; and if such owner or agent shall not have had sufficient notice to be present when such person came before the justice or magistrate for examination as aforesaid, such justice or magistrate shall, if required by the owner or agent aforesaid, or if such justice or magistrate shall deem it necessary, although no such requisition shall be made, again call such person before him for examination by the owner or agent aforesaid; and every such person who shall neglect or refuse (upon being summoned) to appear again before such justice or magistrate, and be again examined as aforesaid, shall be deemed guilty of a misdemeanor, and punished as in cases of misdemeanors, at the discretion of the court in which he shall be convicted.

Perjury to be
punished.

If any person examined by or before any justice or magistrate under this act as aforesaid, shall wilfully or corruptly

ruptly swear any thing which shall be untrue; or if any person shall suborn or procure any person to commit perjury in any such examination, every such person so offending, and being thereof duly convicted, shall be liable to the like pains and penalties as for committing perjury, or guilty of subornation of perjury. *f. 3.*

[By 54 G. 3. c. 42. the 52 G. 3. c. 16. is repealed — And persons convicted of the offences described in *f. 1.* of that act as to cutting or destroying frame work knitted pieces or machines used in such manufacture, shall be transported for life, or for not less than seven years, as the judge shall direct.]

Fraud. See Cheat.

Friendly Societies.

[33 G. 3. c. 54. — 35 G. 3. c. 111. — 43 G. 3. c. 111. — 49 G. 3. c. 125.]

BY 33 G. 3. c. 54. Any number of persons may form themselves into and establish one or more society or societies of good fellowship, for raising by subscription of the members thereof, or by voluntary contributions, a fund for the mutual relief and maintenance of the members thereof in old age, sickness, and infirmity; or for the relief of the widows and children of deceased members; and such members, or such number of them as shall be nominated a committee for that purpose may from time to time assemble together, and make such proper rules, orders, and regulations for the better government and guidance of the same, as to a majority of such society, or committee thereof so assembled, shall seem meet, so as the same be not contrary to law nor to this act: And they may impose and inflict such reasonable fines and forfeitures upon the members who shall offend against such rules, &c. as shall be just and necessary for duly enforcing the same, to be paid to such uses for the benefit of such society, as they shall by such rules, &c. direct; and they may alter and amend such rules, &c. as occasion shall require, or annul and repeal the same, and make new rules, &c. in lieu thereof. *f. 1.*

Any number of persons may form themselves into a society, and make rules, &c.

Provided, that all such rules, &c. with all convenient speed after the same shall be made, altered, or amended, and so after every making, &c. thereof, shall be exhibited in writing to the justices at the sessions or adjournment thereof for the county or place where such society shall be established, and such rules, &c. shall be subject to the review of such justices, who shall after due examination thereof at the then or the then next subsequent session, annul and make

Such rules, &c. to be exhibited to the sessions, who may annul or confirm them.

void all such rules, &c. as shall be repugnant to this act, and shall allow and confirm such as shall be conformable thereto; and after such confirmation, the rules, &c. so confirmed shall be signed by the clerk of the peace at such sessions, and a duplicate thereof on parchment shall be deposited with and filed by him at such sessions without fee, and the same shall be binding upon all parties during the continuance of the same: And no such society which shall hereafter be established shall be deemed to be within the meaning of this act, until good rules, &c. for the government thereof shall have been confirmed and filed as aforesaid: And no society already established shall be deemed to be within the intent and meaning of this act, unless all the rules, &c. under which the same is thereafter to be governed shall be exhibited, confirmed, and filed in manner aforesaid, at some time before or at the *Michaelmas* sessions, or some adjournment thereof in the year 1792. *f. 2.* [But by 35 G. 3. c. 111. *f. 1.* further time is given till *Mikaelmas* sessions 1796.] And such society who shall have exhibited the rules, &c. made for government thereof at any general or quarter sessions having peculiar jurisdiction for the place where such society is established, and not to the sessions for the county, &c. at large, may exhibit the rules, &c. of such society to the general quarter sessions, or at any adjournment thereof, to be holden for the county, &c. where such society is established, such rules, &c. bearing the certificate of the town clerk or other proper officer of the time when such rules, &c. were respectively first exhibited as aforesaid, or may exhibit in like manner a duplicate or a true copy of such rules, &c. with an affidavit annexed, to be taken before any justice of the county, division, or shire, where such society is established, of the time when such rules, &c. so first exhibited, subject to the like examination, review, allowance, and confirmation, of such last-mentioned general quarter sessions, or adjournment thereof, as is directed by the 33 G. 3. c. 54. *f. 2.*; and such rules, &c. being confirmed by such last-mentioned general quarter sessions, or any adjournment thereof, in manner directed by the said recited act, may be filed at such sessions, and shall be as valid and effectual from the time the same were first exhibited at the sessions having such peculiar jurisdiction as aforesaid, as if the same had been originally exhibited and filed at the sessions holden for the said county, riding, division, or shire.

43 G. 3. c. 111.

Any society who have so exhibited their regulations may exhibit them to the quarter sessions for the county; under certain regulations.

No confirmed rules to be altered but at a general meeting; and to be subject to the review of the sessions.

Provided, that no rule, &c. confirmed in manner aforesaid shall be altered, rescinded, or repealed, unless at a general meeting of the members convened by public notice in writing, signed by the secretary or clerk, in pursuance of a requisition by three or more members, and publicly read at

at the two usual meetings of such society held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose, in which case such committee shall be convened in like manner; and unless such alteration or repeal shall be made with the concurrence and approbation of three-fourths of the members then present, or by the like proportion of such committee as aforesaid; and such alteration or repeal shall be subject to the review of the justices at such sessions or adjournment as aforesaid, and shall be filed as aforesaid; and shall not be binding until agreed to and confirmed by such justices, and filed as aforesaid. 33 G. 3. c. 54. s. 3.

And such society may at any general meeting, or by their committee if any such there be, elect and appoint such persons into the office of steward, president, warden, treasurer, or trustee of such society, and such clerks and other officers as shall be deemed necessary for carrying into execution the purposes of such institution, for such time and for such purposes as shall be fixed and established by the rules of such society, and elect and appoint others in the room of those who shall vacate or die; and every such officer or other person who shall be appointed to any office touching receipt, management, or expenditure, of any money collected for the purpose of any such society, before he shall be admitted to take upon him the execution thereof, shall (if required by the rules of such society) become bound with two sufficient sureties for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules, &c. of such society, and in all matters lawful to obey the same, in such penal sum as the major part of such society at such meeting as aforesaid shall think expedient and to the satisfaction of such society; and such bond to be given by such treasurer or trustee shall be given to the clerk of the peace of the county, riding, division, or shire, where such society shall be established, without fee; and, in case of forfeiture, it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of such society; and every such bond to be given by any other person appointed to any other office or trust as aforesaid, shall be given to the treasurer or trustee of such society for the time being, to be by him prosecuted for any forfeiture thereof for the use of such society; and no bond or other security given to or on account of such society, in pursuance of this act, shall be chargeable with any stamp duty. s. 4.

Officers to be appointed;

and to give security if required.

Such securities not subject to any stamp duty

Every such society may elect and appoint any number of the members thereof, not less than eleven, to be a committee,

Committees may be appointed.

tee, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who shall continue to act as such committee for such time as they shall be appointed; and in all cases where a standing committee shall be appointed for general purposes, their powers shall be first declared in their rules, &c. confirmed and filed at the sessions as aforesaid; and where a committee shall be appointed for any particular purpose, the powers delegated to them shall be entered in a book by the secretary or clerk, and five of the members of such committee at least shall be necessary to concur in any act of such committee; and they shall, in all things delegated to them, act for and in the name of such society, which acts shall have the like force as if done at any general meeting. Provided, that the transactions of every such committee shall be subject to the review, allowance, or disallowance and controul of such society, in such manner as by their rules, &c. confirmed and filed as aforesaid is directed. *f. 5.*

Surplus money
may be lent out
at interest.

Such treasurer or trustee may and shall, with the consent of such society, testified as directed by their general rules and orders, lay out such part of the money belonging to such society as the exigencies thereof shall not immediately call for, either on private security, to be approved of as aforesaid, (to be taken in the name of such treasurer or trustee,) or may vest the same in the public funds in the name of such treasurer or trustee; and with such consent as aforesaid may alter and transfer such securities and funds, and make sale thereof respectively. And the dividends, interest, and proceeds thereof shall be brought to account by such treasurer or trustee, and shall be applied to the use of such society. *f. 6, 7.*

Treasurers, &c.
to render ac-
counts, and pay
over balance, &c.

Provided, that the treasurer or trustee and all other officers of such society, who shall have or receive any money, effects, or funds, of such society, or shall be entrusted with the disposition, management, or custody thereof, or of any security relating to the same, his executors, administrators, and assigns, shall upon demand in pursuance of any order of such society or committee, give in his account at a general meeting, or to such committee as aforesaid, to be examined and allowed or disallowed, and shall on like demand pay over the money remaining in his hands, and assign and transfer or deliver all securities, effects, or funds, taken or standing in his name as aforesaid, or being in his custody, to the treasurer or trustee, or such other person as such society shall appoint; and in default thereof, such society, in the name of the treasurer or trustee, may exhibit a petition in *Chancery*, or the *Exchequer*, who may hear and determine the same, and assign counsel, and appoint a clerk

And on neglect
application may
be made to the
court of chan-
cery.

of such court to advise and carry on such petition on behalf of such society, who are to act without fee; and no fee shall be taken by any officer of such court, and the proceedings therein shall not be chargeable with any stamp duty.

§. 8, 9.

If any person appointed to any office by any such society, and having in his hands any money or effects or securities belonging to the same, shall die, or become a bankrupt, or insolvent, his executors, administrators, or assignees shall, within 40 days after demand made by the order of any such society, or the major part of them assembled at any meeting, deliver all things belonging to such society to such person as they shall appoint, and shall pay out of the assets or effects of such person all sums of money remaining due which such person received by virtue of his said office before any of his other debts are paid, and all such assets and effects shall be bound to the payment thereof accordingly. §. 10.

Money due to societies to be paid before any other debts.

And all the effects whatever belonging to such society shall be vested in the treasurer or trustee for the time being for the benefit of such society, and after their death or removal, shall vest in the succeeding treasurer or trustee without any assignment or transfer whatever, and shall for all purposes of action or suit, as well criminal as civil, in anywise concerning the same be deemed to be and be stated to be the property of the person appointed treasurer or trustee, in his name: and such person so appointed may bring or defend any action, suit, or prosecution, concerning the monies, goods, or chattels, or effects of such society; and may in like cases sue and be sued, plead and be impleaded, in his proper name without other description; and who may bring and defend actions, sue, or be sued; and the same shall not be discontinued by the death or removal of such person.

Effects of societies to be vested in the treasurer, &c.

§. 11.

Before any of the rules, &c. of any such society shall be confirmed by the justices in manner aforesaid, it shall be declared by one or more of the general rules, &c. of such society, the intents and purposes for which it is intended to be established, and shall also therein direct the uses and purposes to which the money which shall be subscribed, paid, or given, for the benefit thereof, or shall arise therefrom, or belong thereto, shall be applied, and in what shares and proportions and under what circumstances any member or other person shall become entitled to the same or any part thereof, which application shall not be repugnant to the uses, intents, and purposes of such society so declared as aforesaid; and such rules, &c. shall be complied with and enforced, and such monies shall not be diverted or misapplied, under such

Societies to declare the purpose of their establishment, &c.

May inflict penalties.

penalty

Not to be dissolved without consent.

penalty or forfeiture as by any general rule, &c. shall be imposed and inflicted. *f. 12.*

It shall not be lawful for any such society to dissolve or determine the same so long as the intents or purposes declared by them remain to be carried into effect, without the consent of five-sixths of the then existing members, and also of all persons then receiving or entitled to relief, testified under their hands individually and respectively; nor shall such society direct the division or distribution of such stock or fund, or any part thereof, among the members, other than for carrying into effect the general intents and purposes thereof, declared by them, and confirmed by the justices as aforesaid; but all such rules, &c. for the dissolution of such society, without such consent, or for the distribution contrary to the rules, &c. shall be void. *f. 12.*

Rules and orders to be entered in a book, and received in evidence, &c.

All the rules, orders, and regulations shall be entered in a book to be kept by a member to be appointed for that purpose, and shall be signed by the members, and shall at all reasonable times be open for their inspection, and shall be deemed original orders, and shall be received in evidence in all courts; and no *certiorari* shall be allowed to remove any such rules, &c. into the courts at *Westminster*. *f. 13.*

Societies may receive donations.

Any such society may receive donations towards the supply of their stock, which shall be applied to the general purposes of this society in like manner as the contributions of the several members, and in no other manner. *f. 14.*

Members thinking themselves aggrieved, may complain to two justices, who may hear and determine the same.

If any person, having been admitted a member of any such society, shall think himself aggrieved by any act, matter, or thing done or omitted by any such society, or person, acting under them, two neighbouring justices on complaint upon oath or affirmation by or on behalf of such person may summon the presidents, wardens, stewards, or other principal officers of such society by whatever name they shall be called, or any one of them, if such complaint be made against such society collectively; and in case such complaint shall be made against any person appointed to any such office as aforesaid, then to summon such person to appear before them, and also to summon to appear at the same time and place, if there be occasion, all such persons as shall appear to have the custody of the rules, orders, and regulations of such society; and such justices at the time and place named in such summons, whether the person summoned appear or not, on proof upon oath of such summons having been duly served or left at his usual place of abode, shall proceed *peremptorily* to hear and determine in a summary way the matter of such complaint according to the true purport and meaning of the rules, orders, and regulations of such society, confirmed

confirmed by the justices as aforesaid, and shall make such order therein as to them shall seem just, which shall be final to all intents and purposes, and shall not be subject to appeal, nor removeable into the courts at *Westminster*. *f. 15.*

If provision shall be made by the rules or orders of any such society, and confirmed as aforesaid, for a reference by arbitration of any dispute between such society or any person acting under them, and any individual members thereof, the matter so in dispute shall be referred to such arbitrators as shall be named and elected in such manner as prescribed in such general rules and orders; and whatever award, order, or determination shall be made by such arbitrators, or the major part of them, according to the true purport and meaning of the rules and orders of such society, confirmed as aforesaid, shall be binding and conclusive, and final without appeal, or being subject to the control of two justices in the manner herein-before described. *f. 16.*

No member of any society established in pursuance of this act, who shall inhabit in any parish, township, or place not having a legal settlement there, or who shall come to inhabit or reside there, and shall deliver to the churchwardens or overseers, or either of them, a certificate under the hands of the stewards, presidents, wardens, or treasurers of such society, or any two of them, for the time being, to be attested by one credible witness, thereby acknowledging the person mentioned in such certificate to be a member of such society, shall during the time such person shall continue to be such member, be removeable, until actually chargeable or forced to ask relief of the parish, &c. to which such certificate was delivered. *f. 17.* [But this provision is rendered unnecessary by the statute 35 G. 3. c. 101. See *post*. vol. 4. title *Poor*.]

Provided always, that every such certificate shall express the places of abode of the persons signing and attesting the same, and one of the attesting witnesses shall make oath before a justice of the county, liberty, borough, town corporate, or place where such society shall be established that he did see the persons whose names are thereunto set severally sign the said certificate, and that the names of such witnesses are of their own proper hand-writing; which said justice shall also certify that such oath was made before him; and every such certificate so made, and oath of the execution thereof so certified by the said justice shall be taken, deemed, and allowed in all courts whatsoever as duly and fully proved, and be received as evidence without other proof thereof. *f. 18.*

Provided always, that upon complaint made by the churchwardens and overseers where such certificate shall be
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Where general rules direct disputes to be settled by arbitration.

No member, producing a certificate hereof, removable till actually chargeable.

How such certificates are to be authenticated.

Justices may summon persons bringing certifi-

cates to be examined as to their settlements.

Copies of such examinations to be given to the parties, which shall exempt them from further examination.

delivered to any justice or justices of the county, division, or shire, or city, borough, town corporate, or place where such person shall reside or come to reside under the authority of this act, such justice or justices shall summon such person before him or them in the division or place where such person shall reside or come to reside, in order to be examined on oath touching the place of his last legal settlement, and such person is required to obey such summons, and make oath accordingly; and such justice or justices is and are required to give an attested copy of such examination so taken before him or them to the person making the same, to be by him or any person on his behalf at any time afterwards produced before any such justices as aforesaid, before whom such person shall be again summoned to make oath as aforesaid; and that, in case any such person shall be so again summoned, then on the production of such attested copy such person shall not be compelled or required to take any other or further oath with regard to any of the matters contained in such examination, but such person shall, if required, permit a copy thereof to be taken for such last mentioned justices. *f. 19.*

Two justices may declare, by an order, the place of settlement of such persons without removing them.

Any two justices who shall have taken such examination as aforesaid, or before whom such attested copy of such examination shall be produced at the request of such churchwardens and overseers as aforesaid, shall by an order under their hands and seals adjudge and declare the place of the last legal settlement of such person having been so examined on oath as aforesaid, or of such of his family as shall reside in such parish or place under the authority of this act, without issuing any warrant to remove such person or his family as aforesaid to such place of their last legal settlement; and a duplicate of such order shall be transmitted to the quarter sessions to be holden next after 20 days from the time of making thereof for the county, riding, division, or shire, where such person shall so reside, to be there filed; and a copy of every such order, attested by one witness, or a duplicate thereof, together with an attested copy of such examination to be annexed to such copy of such order or duplicate, shall be delivered to the churchwardens and overseers of the parish or place in which the person mentioned in such order shall be adjudged to be last legally settled as aforesaid, or to any or either of them, at least 15 days before the first day of holding such sessions; and upon proof on oath of one witness before the justices at such sessions of the delivery of such copy or duplicate with such examination annexed as aforesaid, such justices shall direct the same to be filed at such sessions; and every such order so filed shall be final and conclusive in ascertaining and

A duplicate of such order to be transmitted to the sessions;

and a copy of such order and examination to be returned to the place of settlement.

and determining the place of the last legal settlement of the persons named in such order, unless appealed against within the time herein-after mentioned. *f. 20.*

Provided, that all persons who shall think themselves aggrieved by any such adjudication of the said justices may appeal to the next sessions to be holden next after 15 days from the time of the delivery of such copy or duplicate as aforesaid; and such sessions shall receive such appeal, and hear and determine the merits thereof, in like manner, and with the same effect, and under the like rules, as if the persons mentioned in such orders had been by warrant of two justices actually removed, and may award like costs, to be recovered in like manner as is directed on appeals against orders of removal by any statute now in force. *f. 21.*

But no member of any such society, who shall reside in any parish or place under and by virtue of this act, shall acquire any settlement therein by delivery and publication of any notice in writing, unless made after he shall cease to be a member thereof, and after the revocation of his certificate herein-before mentioned. — Nor by being rated to and paying any tax or rate. — Nor shall any apprentice, or hired servant, to any such member of any such society, who came into, or shall reside in any parish or place under the authority of this act, and not afterwards having gained a legal settlement therein, be adjudged to gain any settlement by reason of such apprenticeship or service. *f. 22, 23, 24.*

Persons residing under this act shall gain no settlement by notice;

nor by paying taxes; not by being an apprentice, or servant to any such persons.

Every child which shall be born a bastard in any parish or place during the mother's residence therein under the authority of this act shall have the same settlement which the mother had at the time of the birth of such child, any law, usage, or custom to the contrary notwithstanding. *f. 25.*

Bastards to have the mother's settlement.

When any overseers shall have been put to any charge in maintaining any person or his family residing in any parish or place under the authority of this act, or in removing any person back to the place where he shall belong after he shall have become chargeable, or asked relief as aforesaid, such overseer shall be reimbursed reasonable charges by the overseers of the parish or place to which such person shall belong, such charges having been first ascertained and allowed by one justice residing near where such charges shall be incurred; to be levied in case of refusal of payment by distress and sale of the goods and chattels of such overseers as last aforesaid by warrant of one justice, returning the overplus, if any there be. *f. 26.*

Charges of maintenance and removal to be reimbursed.

And by 35 G.3. c. III. *f. 2.* after reciting that several benevolent and charitable institutions and societies formed for

Governors of institutions for relief of widows, &c. may frame

rules, which are to be presented for confirmation as by the aforesaid act.

relieving, by voluntary subscriptions and benefactions, widows, orphans, and families of the clergy, and others in distressed circumstances, may have funds which they may wish to place out on public securities, under the management of a treasurer, and under the authority of parliament, it is enacted that the governors, directors, managers, or members of any such institutions may frame good and wholesome rules for the management and distribution of their funds, and amend and alter the same, or make new ones as occasion may require, and procure the same to be presented to the justices for confirmation within the time herein-before limited (i. e. *March 1796*), and registered under and subject to the same conditions, methods, restrictions, and regulations as the members of the societies established by 33 G. 3. c. 54.

Institutions whose rules shall be confirmed, may appoint treasurers, &c.

And the governors, directors, managers, or members of any such institution, whose rules shall be confirmed and registered as by said recited act, may appoint a treasurer, who shall give security as by said recited act, and shall be subject to account for the funds belonging to such institution, and the same shall be vested in such treasurer, who may sue and be sued as directed in said recited act; and all things in the aforesaid act contained, so far as the same relate to such treasurers and the funds vested in them, shall extend to the institutions established by virtue of this act, as fully and effectually as any society established by virtue of the aforesaid recited act. And all the powers, authorities, rules, methods, directions, regulations, provisions, conditions, and restrictions in the said act contained, relating to the matters before mentioned, shall be applied to the several institutions established by virtue of this act, as fully as if the same had been repeated and re-enacted herein. *f. 3.*

Justices on complaint may enforce the observance of the rules, and levy any arrears by distress and sale.

By 49 G. 3. c. 125. *f. 1.* If any person having been admitted a member of any society established under the authority of the 33 G. 3. c. 54. shall offend against any of the rules, orders, or regulations of such society, it shall be lawful for any two justices residing within the county, riding, division, shire, stewartry, city, liberty, or place within which such society shall be held, upon complaint made on oath by any member, to summon such person against whom such complaint shall be made; and upon his appearance, or, in default thereof, upon due proof upon oath of the service of such summons, such justices shall proceed to hear and determine the said complaint according to the rules, &c. of the said society confirmed as directed by the said act, and shall make such order therein as to them shall seem just; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made

made

made, and such person shall not on notice of such order forthwith pay the sum of money so adjudged to the person or persons, and in the manner directed by this act, such justices shall by warrant under their hands and seals cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, together with such costs as shall be awarded by the said justices, and also the costs and charges attending such distress and sale.

And by s. 2. Whereas it was provided by the 33 G. 3. c. 54. that no society to be established for the purposes therein recited should be deemed to be within the same act, unless the rules of the society should be filed at the quarter sessions before the end of 1794, which time was enlarged by an act of the thirty-fifth year of his present majesty's reign to *Michaelmas* 1796, it is enacted, that all such societies, the rules, &c. of which shall have been exhibited to the justices since *Michaelmas* 1796, or which shall at any time hereafter be exhibited in the manner directed by the 33 G. 3. c. 54. and which shall have been or shall be dealt with, examined, approved of, and confirmed by the justices in the manner therein directed, and deposited with the clerk of the peace and filed as directed also by the said act, shall be taken to be within the said act, as amply as if their rules had been established within the periods limited in either of the recited acts.

Societies established before 1796 allowed to file their rules.

By s. 3. If complaint shall be made to two such justices by any member, of relief having been refused to him by any such society, to which he shall be lawfully entitled according to the rules of the society to which he shall belong, the said two justices residing within the county, &c. within which such society shall be held, shall, upon complaint made by or on the behalf of the person aggrieved thereby, summon the person, being an officer of the society against whom such complaint shall be made, and upon his appearance, or in default thereof, upon due proof upon oath of the service of such summons, shall proceed to hear and determine the said complaint, and award such sum of money to be forthwith paid to the said complainant as shall appear to them to be due on such award as aforesaid, together with such a sum for costs, not exceeding the sum of ten shillings, as to them shall seem meet; and if the said sums so to be awarded, together with such costs, shall not be forthwith and in the presence of such justice or justices paid to such complainant, or to some person there attending on his behalf, then such justices shall by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress or by distress and

Orders of justices for payment of money, to specify the time and manner of payment.

sale of the monies, goods, chattels, securities, and effects belonging to the said society, together with all further costs and charges attending such distress, or such distress and sale, returning the overplus (if any) to the said society, or to one of the treasurers or trustees thereof, and in default of such distress being found, then to be levied by distress and sale of the proper goods of the officer or officers of the said society so neglecting or refusing as aforesaid, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner, and so from time to time as often as complaint shall be made of the non-payment of any sum or sums directed by such order to be paid as aforesaid, such justices shall by like warrant cause such arrears from time to time to be levied in the manner before directed: Provided always, that whatever sums shall be paid by any such officer or officers, or levied on his or their proper goods in pursuance of the order of any justices as aforesaid, shall be repaid, with all damages accruing to him or them, by and out of the monies belonging to such society, or out of the first monies which shall thereafter be received by such society.

Orders of justices to be made on officers of societies by name, and served on them.

And by *f. 4.* All orders made by justices by virtue of the said act or this act, upon the complaint of any person having been admitted a member of any society established under the said act, who shall be aggrieved by any act or thing done or omitted to be done by any such society, shall be made upon the presidents, wardens, stewards, treasurers, trustees, or other principal officers of the society to which such complaint shall relate, or any one or more of them, or any of them, at the discretion of the said justices, in the proper name or names of such officer or officers; and every such order may be served upon the officer or officers so named therein, either by delivering a copy of the said order to such officer or officers, or one of them, or leaving the same at his last or usual place of abode; and such service shall be binding on such officer or officers, and on the society to which such officer or officers shall belong, to do and perform, or cause to be done and performed, all and every the matters and things contained in and directed by such order, to be done according to the true intent and meaning thereof.

Orders to be final.

And by *f. 5.* Every order, adjudication, or award of any justice or justices under this act, shall be final and conclusive to all intents and purposes, and shall not be removed or removeable into any court of law, or restrained or restrainable by the injunction of any court of equity.

The King v. the Justices of Staffordshire. Motion for a mandamus to the defendants to annul and make void all such rules, orders, and regulations, hereafter mentioned, as should

be repugnant to the act of the 33 G. 3. c. 54. for the encouragement and relief of friendly societies, and to allow and confirm all such of the said rules, &c. as should be conformable to the true intent and meaning of the said act. The rules and regulations hereafter mentioned of a certain society therein described, called by the name of "the Benevolent Society of Roman Catholic Secular Clergy Priests, established for their mutual relief and assistance in sickness, infirmity, old age, and so forth, incapacitating them to attend to the duties of their state of life," were exhibited to the said justices in sessions and subjected to their review, in order that the same might be signed by, and a duplicate thereof on parchment deposited with and filed by the clerk of the peace at such sessions. The majority of the justices rejected the application altogether.

The rules referred to were, *inter alia*, 1st, That the society shall consist only of Roman Catholic secular clergy priests, who reside within certain counties therein named. 2d, That all Roman Catholic secular clergy priests now officiating with the full powers of their order in any of those counties are, and all such persons as shall be received by the existing Superior Roman Catholic clergymen to officiate in like manner, in any of the said counties, may become, members on application to the society, and by contributing to the common stock not less than five guineas on admission. The 3d and 4th regulated the appointment of officers among themselves for managing the affairs of the society. The 5th and 6th regulated the management of their funds by an administrator and his assistants. And by the 7th the administrator was prohibited from making payment to any of the members without the consent of the general meeting, or of the existing Superior Roman Catholic clergyman of the above counties. By the 8th it was provided that the said Superior, being a Roman Catholic secular clergyman, should during his life have a tenth of the yearly income of the society, if he required it. The 9th, 10th, and 11th respected the management of the funds and accounts. And by the 12th any member of this society incapacitated from attending to the duties of his state of life by infirmity, sickness, old age, and so forth, was entitled to receive during such incapacity such sum as should be voted to him by a majority of the members present at a general meeting, for his comfortable and decent support; but if there appeared cause, from misconduct or other reason, to the members present, they might refuse relief; provided that the existing superior and a majority of the members present agreed in such their vote; and the members so voting should not be liable to account for their vote or motion to any but to God. By the 13th,

the society and fund were to continue so long as any twelve members were so disposed; and if any member proposed a dissolution of the society or a division of the fund, he was to be expelled.

Upon the shewing cause against the motion the court were of opinion that the case was not within the meaning of the act of parliament; the object of the society not being confined to the charitable relief and maintenance of its old, sick, and infirm members. 12 E. R. 280.

[This case, as one arising upon a difficult act of parliament, and deciding an important point, is here inserted nearly *verbatim* from the report.]

Note. It is observable that the original act, viz. 33 G. 3. c. 54. was extended in its operation as to time, by the 35 G. 3. c. 111. to other similar societies formed before or immediately after *Michaelmas* 1796, and that the same act of the 35 G. 3. c. 111. further extended the benefit of the 33 G. 3. c. 54. to certain other charitable institutions. — Afterwards the 49 G. 3. c. 125. s. 2. extended the period named in the 35 G. 3. c. 111. for filing the rules, &c. of such societies as were established for the purposes named in the 33 G. 3. c. 54. indefinitely.

Fruit and Fruit Trees. See **Wood.**

Fuel.

[43 El. c. 14. — 9 An. c. 15. — 10 An. c. 6.]

BY the 43 *El.* c. 14. All faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot stick within the bond shall contain full three foot of assize, except only one stick to be but one foot long, to stop or harden the binding.

By the 9 *An.* c. 15. s. 1. All billets (except those made of beach, 10 *An.* c. 6.) that lie exposed in public places where they are usually bought or sold shall be assized, and cut or marked in manner following; that is to say,

All billets of what scantling or denomination soever shall contain in length three foot and four inches, and be of the following dimensions, viz.

Names

Names of the billets.	Round.		Half round.		Quarter cleft.		
	in.	qr.	in.	qr.	in.	qr.	
A single	72	0	0	0	0	0	No notch.
A cast	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 cast	15	0	17	1	17	0	Two notches.
3 cast	18	1	21	1	21	0	{ One at each end, and one in the middle.
4 cast	21	1	24	2	24	0	4 notches.
5 cast	23	3	27	2	27	0	5 notches.
6 cast	26	0	30	0	29	2	6 notches.
7 cast	28	0	32	2	32	0	7 notches.
8 cast	30	0	34	3	34	0	8 notches.
9 cast	31	3	36	3	36	1	9 notches.
10 cast	33	2	38	3	38	0	10 notches.
11 cast	35	1					11 notches.
12 cast	36	3					12 notches.
13 cast	38	1					13 notches.
14 cast	39	3					14 notches.
15 cast	41	0					15 notches.
16 cast	42	2					16 notches.
17 cast	43	3					17 notches.
18 cast	45	0					18 notches.
19 cast	46	1					19 notches.
20 cast	47	2					20 notches.

And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present whether the same be of good and sufficient assize; and if they shall present that any of them is not sufficient, the same so being deficient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor.
Id. f. 2.

And by the 43 *El. c. 14.* The billets shall be measured within six inches of the midst; and the surplussage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the benefit of the buyer.

Fuller's Earth. See **Woollen Manufacture.**
Furze, Burning it in Forests. See **Burning.**

Game.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that perhaps upon a view of the whole it may seem that about four or five new acts, comprehending the several heads here under mentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and useful.

Penalties how to be recovered in general.

After having first premised (in order to avoid frequent repetitions throughout this whole title), that it is enacted by the statute of 8 G. c. 19. that where any person for any offence against *any law in being at the making of the said act*, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 G. 2. c. 2.) by action of debt or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recover he shall have double costs: Provided, that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former prosecution pending or the conviction or judgment thereupon had. And by the 23 G. c. 19. whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence, it is enacted, that it shall be lawful for any person to sue for *the whole of such penalty* to his own use, and if he recover he shall have double costs; such action to be brought within six months after the offence committed. But by 27 G. 3. c. 29. Where any pecuniary penalty or part thereof is given to the poor, the inhabitants of every such parish or place shall be deemed competent witnesses to prove any offences committed therein, notwithstanding that the penalty incurred or any part thereof be given or applicable to the poor of such place, or for the benefit or use thereof; unless such penalty exceed 20l. [See, however, under it's proper head the 48 G. 3. c. 55. providing in a special manner for the recovery of certain of the penalties relating to the game laws.] This being premised, I will treat of this subject under the following heads;

Inhabitants may be witnesses.

Sect. I. *Property in game.*

II. *General observations concerning forests, chases, parks, and warrens, and of trespasss in pursuing game.*

III. *Qua-*

III. *Qualification by estate or degree to kill game, with the punishment of persons unqualified killing or having game in their possession.*

[13 R. 2. ft. 1. c. 13. — 33 H. 8. c. 6. — 1 J. c. 27. f. 3. 5. — 7 J. c. 11. f. 7. — 22 & 23 C. 2. c. 25. f. 3. — 4 & 5 W. c. 23. f. 3. 7. 10. — 5 An. c. 14. f. 2. — 23 G. 2. c. 12. f. 1 — 4. — 13 G. 3. c. 30.]

IV. *Certificate to be taken out.*

[25 G. 3. c. 50. f. 21, 22. 25. — 26 G. 3. c. 82. f. 2, 3. 7. — 48 G. 3. c. 55. Sched. (L.)]

V. *Concerning gamekeepers.*

[22 & 23 C. 2. c. 25. f. 2. — 5 An. c. 14. f. 4. — 9 An. c. 25. f. 1. — 3 G. c. 11. — 25 G. 3. c. 50. f. 9. 14. 17. — 48 G. 3. c. 55. Sched. (L.) — c. 93. f. 2, 3.]

VI. *Laws for preserving the four-footed game in particular.*

[For the statutes see the head of this section in its place.]

VII. *Laws for preserving the winged game in particular.*

[For the statutes see the head of this section in its place.]

I. *Property in game.*

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference between *tame* and *wild* animals.

The tame animals, such as *horses, cows, sheep*, and the like, are such creatures as by reason of their sluggishness and unaptness for motion do not fly the dominion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore the owner hath the same kind of property in them as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass.

Tame animals.

The wild animals, such as *deer, hares, foxes*, and such like, are those, which by reason of their swiftness or fierceness fly the dominion of man; and in these no person can have a property, unless they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own use and the ability that he hath to apply it to the sustenance of his being, when that power ceaseth, his property is lost; and by consequence an animal of this kind,

Wild animals.

kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indies*, because I have it no longer in my power or disposal.

[But a man may have property in deer in an enclosed ground. *Davies v. Powell. Will. Rep. 46.*]

Hence it appears that by the common law every man had an equal right to such creatures as were not naturally under the power of man, and that the mere caption or seizure created a property in them. By immediate taking and killing them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him.

Also by taking and taming them, they belong to the owner as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man.

Another way of gaining property in them is, by inclosure; and then the beasts must be understood to be mine, as the profits or the soil itself are; and they can no more be taken and carried off than any other profits of the land. Therefore if deer be inclosed in a park or paddock; or conies in a field or warren, they become so much a man's own that no one ought to kill or take them away. And since in this case it is the inclosure that retains them, (for take away the inclosure, and they are in their natural liberty,) therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal.

It is a maxim of the common law that such goods, of which no one can claim any property, belong to the king by his prerogative; and hence all those animals *fera natura*, which come under the denomination of game, are styled in our laws his *majesty's* game; and that which he hath, he may grant to another; and consequently another may prescribe to have the same within such a precinct or lordship. And from hence cometh the right of lords of manors or others unto the game within their respective liberties. [But this doctrine, "that the sole property of all the game is vested in the king alone," is rendered very questionable by Mr. *Christian* in his comment on the commentator. 2 *Bl. Com.* 419. n. 10. *W.*]

And

And upon this foundation the several acts of parliament are established, for the preservation of these species of animals: for the recreation and amusement of persons of fortune, unto whom the king, with the advice and assent of parliament, hath granted the same; and to prevent persons of inferior rank from squandering that time which their station in life requireth to be more profitably employed: for these restrictions do not take from the common people any right which they ever had; but only grant unto some persons those privileges which before rested solely in the king. 2 *Bac. Abr.* 612, 613.

II. General observations concerning forests, chases, parks, and warrens, and trespasss in pursuing game.

A *forest* is a certain territory of woody grounds and fruitful pastures, privileged for wild beast and fowls of forest, chase and warren, to rest and abide there in the safe protection of the king for his delight and pleasure; which territory of ground so privileged is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record or by prescription; and also replenished with wild beasts of venery or chase, and with great coverts of vert for the succour of the said beasts there to abide; for the preservation and continuance of which, there are particular officers, laws, and privileges, belonging to the same, requisite for that purpose, and proper only to a forest and to no other place. *Manw.* 40.

Forest, what.

Note; That vert comprehends every thing which bears green leaves in the forest. *Manw.* 51.

And the lord having the wood in the tenant's land, which is still customary in many manors, was originally for preservation of the vert, for the sustentation of the lord's game there.

Beasts of forest are properly hart, hind, buck, hare, boar, and wolf; but legally all wild beasts of venery. 1 *Inst.* 233.

Beasts of forest.

Purlieu comes from the French *pur*, clear, entire, and exempt, and *lieu* a place: that is, a place, entire, clear, or exempt from the forest; and signifies those grounds which Henry the second, Richard the first, or king John, added to their ancient forests, over other men's grounds, and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 318.

Purlieu, what.

But nevertheless the *purlieu* as to some purposes is forest still, and is disafforested as to the particular owners of the land, and for their benefit, and not generally to give liberty to any man to hunt the wild beasts and spoil the vert.

And if those beasts escape out of the forest into the *purliu*, the king hath a property in them still against any man but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly and not forestall them in their return towards the forest. *Manw.* 366.

But a *purliu* man may not hunt in every man's lands within the *purliu*, but in his own lands only; and therefore if he find the beast of the forest in his woods or lands in the *purliu*, in such case he hath property in them against any other man *ratione soli* (the king only excepted). And if he begin the hunting in his own lands, then by reason of that property he may pursue his hunting through any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, though himself never came within the bounds thereof. But if in hunting towards the forest the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entered the forest, he may lawfully enter and take it. *Manw.* 373.

Chase, what.

A *chase* (from *chasser* to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest and not endowed with so many liberties as officers, laws, courts, and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not inclosed; for if it be inclosed, it is a good cause of forfeiture; though it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Read. Game. Manw.* 49.

Beasts of chase.

Beasts of chase are, the buck, doe, fox; mattern, and roe. *Manw.* 44.

Park, what.

A *park* (from the French, *parquer*, to inclose) is a large parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. *Read. Game.*

Beasts of park.

The beasts of park properly extend to the buck, doe, fox; but in a common and legal sense to all the beasts of the forest. *Id.*

A park

A park must be inclosed; for if it lie open, it is a good cause of seizure into the king's hands, as a thing forfeited; and the owner cannot have an action against those that hunt in his park, if it lies open. *Id.*

Park to be inclosed.

Deer in a park shall go to the heir, and not to the executor. 1 *Inst.* 8.

Deer shall go to the heir.

A warren is a place privileged by prescription or grant of the king, for the preservation of the beasts and fowl of the warren, viz. hares, conies, partridges, and pheasants.

Warren, what.

Manw. 44.

A free warren may lie open, there being no necessity of inclosing it. *Read.* Game.

Need not be inclosed.

Conies in a warren (as hath been said before of deer in the park) shall go to the heir, and not to the executor.

Conies shall go to the heir.

1 *Inst.* 8.

It is not lawful for any person to make any chase, park, or warren, in his own freehold, or elsewhere, to keep in it any wild beasts or birds of forest, chase, park, or warren, without the king's grant or warrant so to do; and if any man do, he is to be punished in a *quo warranto*, and the franchise to be seized into the king's hands. *Manw.* 56.

License to erect.

M. 12 G. R. v. Sir William Lowther. It was moved for leave to file an information in nature of a *quo warranto* against Sir William Lowther, to shew by what authority he had made and set up a warren. But it was denied by the court: because they said it was of a private nature only. And the like motion had been denied before in the case of the Lord Lisburne. 2 *L. Raym.* 1409. 1 *Str.* 637.

E. 17 G. 3. Lord Dacre v. Tebb. Declaration in trespass for breaking and entering his free warren in *Aveley* in the county of *Essex*, and chasing, hunting, and killing divers foxes, hares, conies, partridges, and pheasants of the plaintiff, and taking away other his goods and chattels. On not guilty pleaded, and tried by a special jury, the defendant was found guilty of breaking and entering the free warren of the plaintiff, and chasing and hunting one hare, damages 6d., and not guilty as to the residue. It was moved for the plaintiff that he should have full costs; alleging that the statute 22 & 23 C. 2. (which restricts costs in trespass, where the damages are under 40s. unless the freehold or title to the land come in question,) did not extend to this action, in which there could not possibly be any question relating to the land, but merely to the franchise of free warren; for that act related only to such action of trespass, where some injury was done to the land. For the defendant it was answered, that it was possible the freehold or title to the land might be so interwoven with the title to the free

Hunting in a free warren.

free warren, that both might come in question. And where the title of the land may come in question, but does not, and the damages are under 40s. there shall be no more costs than damages.—By the court: the act is confined to such actions of trespass where the soil or land is mentioned in the declaration as the subject of the trespass complained of. The right of free warren was not in the contemplation of the legislature. In an action merely for breaking free warren, it is impossible the title of the soil can ever come in question. For though both may concur in one person, yet the title to the free warren is always collateral to that of the land; for a man may have free warren in another man's land. Besides, the hare so hunted was the personal property of the owner of the free warren; and if any injury be done to personal property that will take it out of the statute, and intitle the plaintiff to full costs. And the rule was made absolute for taxing full costs. 2 *Black. Rep.* 1151.

A man may have free warren in another man's land,

Which of these is the highest franchise.

A forest is the highest franchise of princely pleasure; the next to that is, a free chase; a chase in one degree is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase is, a park; and the next unto a park is the franchise of a free warren. And a forest comprehends in it a chase, park, and warren. And for that cause, the beasts of chase, and the beasts and fowls of warren, are privileged within a forest as well as the beasts of the forest are. *Manw.* 52.

Common in a chase.

A person may have common in a chase, as well as in a forest, but a forest is governed by the forest law, and a chase and park by the common law. 4 *Inst.* 314. *Manw.* 52.

And by the common law (says *Blackstone*) no person is at liberty to take or kill any beasts of chase, but such as have an antient chase or park; unless they be also beasts of prey. 2 *Black. Com.* 416.

If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land by reason of the first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same in the cases of all wild beasts of the forest and chase. *Manw.* 389.

No man can come upon another man's ground to kill game, without being liable to an action of trespass. 2 *Bac. Abr.* 613. 2 *Bl. Com.* 417. 2 *Blac. R.* 900.

Trespass in going upon another's ground.

But if he be qualified to kill game, and the damage found shall be under 40s. he shall in such case pay no more costs than damages. *Id.*

But in the case of *Reynold v. Edwards*, *M.* 35 *G.* 3. which was upon an action of trespass tried before *Buller J.* at *Staffordshire* assizes, where it appeared in evidence that a trespass was committed by the defendant in courting over a close belonging to the plaintiff, who four years before had given a general notice to all persons not to trespass on his lands; and where it also appeared that the defendant was anxious to avoid trespassing on the plaintiff's grounds and had made enquiries respecting his boundaries; the plaintiff's counsel pressed the judge to certify that the trespass was wilful and malicious, in order to entitle the plaintiff to full costs under 8 & 9 *W. c. 11. s. 4. (a)*; and the judge conceiving that he had no discretion on the subject accordingly certified, reserving liberty to the defendant to move to set aside that certificate, if this court should be of opinion that the statute was not compulsory on the judge. — Afterwards a motion was made to that effect. But the court refused to grant the rule, saying, that in the case of *Swinerton v. Jarvis*, *E.* 22 *G.* 3. in the common pleas, it was determined that if it appeared that the trespass, however trifling, was committed after notice, the judge was bound to certify under the statute; and that it was proper to adhere to that as an universal rule. 6 *T. R.* 11.

However, in *Good v. Watkins*, *E.* 43 *G.* 3. which was an action of trespass, and in which there was a verdict for the defendant of 1s. damages, It was decided that it was not compulsory upon the judge to certify; but that the act of parliament meant to leave it altogether to his discretion to certify or not, according as it appeared to him on the trial that the trespass was or was not malicious. 3 *E. R.* 498.

Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a public benefit; [and in *Gundry v. Feltham*. 1 *T. & R.* 334. it was ruled on demurrer that the defendant was justified in

No trespass in following beasts of prey.

(a) The 8 & 9 *W. c. 11. s. 4.* sets forth, that in all actions of trespass where at the trial it shall appear and be certified by the judge under his hand, upon the back of the record, that the trespass was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit.

following over the plaintiff's grounds, a fox that had been started in another person's ground,] yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac.* 321.

Vere v. Lord Cawdor, and King. M. 50 G. 3. In this which was an action of trespass for shooting and killing a dog of the plaintiff, there was a plea of not guilty, and a special plea that Lord Cawdor was lord of the manor, and the defendant gamekeeper, duly deputed and appointed to preserve the game upon the manor; that the dog was in a close, parcel of the manor, *running after, chasing,* and hunting divers hares there, and that the defendant King, as such gamekeeper, in the said close, *for the preservation of the said hares,* shot and killed the said dog.—To this plea there was a demurrer; and after argument, Lord Ellenborough, C. J. said, the question is, whether the plaintiff's dog incurred the penalty of death for running after a hare in another's ground? And if there be any precedent of that sort which outrages all reason and sense, it is of no authority to govern other cases. There is no question here as to the right of the game. The gamekeeper had no right to kill the plaintiff's dog for following it. The plea does not even state that the hare was put in peril, so as to induce any necessity for killing the dog in order to save the hare.—*Per Curiam.* Judgment for the plaintiff. 11 *E. R.* 568.

Game escaped out of the inclosure, may be retaken on fresh pursuit.

If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursue them, he may retake them; for the parker or warrener is an establishment by the public, to look after and preserve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the public; now in parks and warrens offices are established by authority to have any eye over the game, and to keep it within the boundaries; so that the property is not altered by driving in out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 2 *Bac. Abr.* 613.

Property in game killed.

If a man start any game within *his own* grounds, and follow it into another's, and kill it there, the property remains in himself; and this is grounded on reason and natural justice, for the property consists in the possession, which possession commences by the finding it in his own liberty, and is continued by the immediate pursuit. 11 *Mod.* 75. 2 *Black. Com.* 419.

And so if a stranger start game in one man's chase or free warren, and hunt it into another liberty, the property continues

continues in the owner of the chase or warren; this property arising from privilege, and not being changed by the act of a mere stranger. 2 L. Raym. 251. 2 Black. Com. 419.

If a man start game on *another's* private grounds, and kill it there, the property belongs to him in whose ground it was killed, because it was also started there, this property arising *ratione soli*. But if after being started there, it is killed in the ground of a *third* person, the property belongs not to the owner of the first ground, because the property is local; nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners. *Id.*

By 23 El. c. 10. s. 4. No person shall hunt with his spaniels in any ground where corn or other grain shall grow (except in his own ground) at such time as any eared corn shall be growing, nor before it be shocked, on pain of forfeiting to the owner of the grain, 40s. Hunting amongst growing corn.

III. *Qualification by estate or degree to kill game; with the punishment of persons unqualified, killing or having game in their possession.*

The qualification by estate for killing game in the reign of K. Richard the second, was 40s. a-year; in the reign of K. James the first it was advanced to 10l. a-year, and after that in some instances to 40l. a-year; and at last, in the reign of K. Charles the second, it was raised to 100l. a-year. Not that the laws have become gradually more severe; but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40s. a-year in the reign of K. Richard the second was not much inferior to an estate of 100l. a-year in the reign of K. Charles the second. And the penalty for destroying the game was even more severe then than it is now. As those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary, in order to have a thorough knowledge of this matter, to insert them in their order, because the penalties on each being different the prosecutor or justices may chuse upon which of them they will convict an offender. Thus by the statute of the 5 An. hereafter following, if a person not having 100l. a-year shall keep dogs or engines to destroy the game, he shall forfeit 5l.; but if such person have not 40s. a-year, he may upon the statute of R. 2. be punished by a year's imprisonment; and so of the rest:

Provided, that no person be prosecuted upon more than one act for one offence.

40s. a year.

The first qualification relating to the game was in the 13th year of the reign of R. 2. ; by which it is enacted that no layman which hath not lands or tenements of 40s. a-year, nor clergyman if he be not advanced to 10l. a-year, shall have or keep any greyhound, hound, nor other dog to hunt ; nor shall use ferrets, hays, nets, hare-pipes, nor cords, nor other engines, for to take or destroy hares, nor conies, nor other gentlemen's game ; on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 R. 2. *f.* 1. *c.* 13.

10l. a-year.

The next qualification by estate or degree to kill game was by a statute in the 1 *f.* ; whereby it is enacted that every person who shall have or keep any greyhound for coursing of deer or hare, or setting dog or net to take pheasants, or partridges, (except he be seised in his own right or the right of his wife of lands, tenements, or hereditaments, of the clear yearly value of 10l. or moreover and above all charges and reprises of some estate of inheritance ; or of lands, tenements, or hereditaments, in his own right or in right of his wife, for term of life or lives of the yearly value of 30l. over and above all charges and reprises, or goods to the value of 200l. to his own use, or be the son of a knight or of a baron of parliament, or of some person of higher degree or the son and heir apparent of any esquire,) and being thereof convicted, by confession or oath of two witnesses, before two justices, he shall be committed to gaol where the offence shall be committed or the party apprehended three months, unless upon conviction he pay 40s. to the churchwardens for the use of the poor ; (a) [or after one month after his commitment he become bound by recognizance with two sureties before two justices in 20l. a-piece not to offend again in like manner.] 1 *f.* *c.* 27. *f.* 3.

40l. a-year.

The next qualification relates to deer and conies only, in the 3 *f.* *c.* 13. ; by which it is enacted that if any person not having manors, lands, tenements, or hereditaments of the clear yearly value of 40l. or net worth in goods 200l., shall use any gun or bow, or cross-bow to kill any deer or

(a) This latter paragraph is part of the *f.* 2. of the same act, but it seems doubtful whether it refers only to the offences described in that sect. viz. the shooting at, killing, and destroying the game therein described, or can be incorporated with this 3d sect. inasmuch as the condition of the recognizance is to be "not to kill, &c. by any of the means in that *f.* 2. aforesaid." K.

conies; or shall keep any buckstall, or engine-hayes, gate nets, purse-nets, ferrets, nets, or coney dogs, (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the clear yearly value of 40s. or keepers or warreners in their parks, warrens, or grounds belonging to their charge,) in such case any person having lands, tenements, or hereditaments, of the clear yearly value of 100l. in fee simple, fee tail, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, cross-bows, buckstalls, &c. &c. 3 J. c. 13. f. 5.

The next qualification relates to pheasants and partridges only, and is as follows; every free warrener, every lord of a manor, and every freeholder seised in his own or his wife's right of lands, tenements, and hereditaments of the clear yearly value of 40l. of some estate of inheritance, or of lands, tenements, and hereditaments, in his own or his wife's right for term of life or lives of the yearly value of 80l. clear, or worth in goods 400l., may by him or his menial and household servants sufficiently thereto by him authorized, take pheasants and partridges (in the day time only) in his own or his master's free warren, manor, and freehold, betwixt *Michaelmas* and *Christmas* yearly. 7 J. c. 11. f. 7. 40l. a-year.

The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in 22 & 23 C. 2. c. 25.; by which it is enacted that every person not having lands and tenements or some other estate of inheritance in his own or his wife's right of the clear yearly value of 100l. per annum, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l. (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies, for their necessary use, in respect of the said forests, parks, chases, or warrens,) is hereby declared to be a person, by the laws of this realm not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, bays, nets, lowbels, harepipes, gins, snares, or other engines aforesaid, but shall be and are hereby prohibited to have, keep, or use the same. f. 3. 100l.

In his wife's right] *R. v. Earnshaw*. E. T. 52 G. 3. This was a conviction of the defendant upon the statute 5 Ann. c. 14. in which the information set out negatived amongst the other qualifications mentioned in the statute 22 & 23 Car. 2. c. 25. f. 3. that the said *John Earnshaw* at the time of the offence committed had "lands or tenements or any other estate of inheritance of the clear yearly value of 100l. or for term of life," &c. or was "in any other manner qualified, employed, licensed, or

authorized by the laws of this realm either to take, kill, or destroy any sort of game whatsoever or to keep or use any lurcher for that purpose." And then it charged that the defendant on the 7th of Nov. 52 G. 3. "at *South Crossland, &c.* did keep and use divers to wit, *ten dogs called lurchers* to kill and destroy the game against the form of the statute," &c. The conviction afterwards proceeded to state that the justice called upon the defendant to shew why he should not be convicted of the offence charged, &c. "who pleadeth and saith that he did use such dogs as aforesaid but that he had a right so to do because one *Thos. Shaw, who was qualified to keep and use such dogs was out along with him at the same time and place*, but doth not shew to me the said justice any sufficient cause why he should not be convicted of the offence in the said information contained against him." It then stated the evidence of the witness in support of the charge, "that the defendant on the said 7th of November, &c. at *South Crossland, &c.* did keep and use ten dogs called lurchers to kill and destroy the game, and that he then and there saw the defendant running after and encouraging the said dogs in the pursuit of a hare." And further the witness negated the defendant's qualification in the terms stated in the information, and thereupon the justice convicted the defendant in the penalty of 5l. for the offence aforesaid.

Objections, 1st. That the defendant was sporting at the time in company with a qualified person. 2dly. That the conviction does not negative that the defendant was qualified by having an estate of inheritance of 100l. a year in right of his wife, which is one of the qualifications of the statute of Car. 2. [Grose J. It is negated that he had any other estate of inheritance or was in any other manner qualified.] It is only negated that he had such estate, &c. of his own, for so it must be understood. The language of convictions should be at least as strict as pleadings. 3d. The statute 5 Ann. c. 14. does not make it penal to use any dogs for the destruction of the game but only dogs of a certain description, including lurchers. Now here it is not stated that the dogs used were lurchers, but only that they were called lurchers. — [Lord Ellenborough Ch. J. The dogs being stated to be of that description which are called lurchers, we must suppose they were rightly so called and that they were lurchers, we must take the allegation according to the subject matter as applied to dogs.

Contrá. This conviction is drawn in the general form in practice, which it appears by a note in the late edition of *Burn's Justice* was settled by Mr. Dunning.

Lord Ellenborough Ch. J. It has been settled that all the qualifications for killing game must be specifically negated in the conviction, and that being so, there is no more reason
for

for dispensing with the terms in which they may be aptly and certainly negatived. Here one of the qualifications mentioned in the statute is omitted to be negatived, namely, that the defendant had an estate of inheritance of the annual value of 100l. in right of his wife, we must presume therefore, that it could not have been truly negatived. It is always safer in these cases to follow the words of the act.

Grose J. agreed.

Le Blanc. J. If it had been only alledged generally that the defendant was not qualified according to law, the conviction would have been declared bad, and I cannot distinguish between the case where none of the qualifications are specifically negatived, and where one of them only is omitted.

Bayley. J. The statute itself makes the distinction between a qualification from an estate in his own and one in his wife's right, and he cannot be properly said not to be qualified without negativing both. — Conviction quashed. *E. R.* 456.

Of the clear yearly value of 100l. per annum.] M. 23 G. 3. Wethrell v. Hall. On an action of debt against the defendant, for the penalty of 5l. for using a certain engine called a gun to kill and destroy the game, not being a person qualified so to do, the cause was tried at *Durham* assizes 1782; when the jury found a verdict for the plaintiff, subject to the opinion of the court of king's bench, on the following case. The defendant *Hall*, having an estate of 103l. a-year, mortgaged a part of it, of the value of 14l. a-year, to *Robert Kelsey*, for 400l.; which part being copyhold, he surrendered the same, according to the custom of the manor, to the said *Robert Kelsey*, who thereupon was admitted tenant. But *Kelsey* never entered upon the premises; *Hall* continuing in possession, and paying interest of the mortgage regularly. The question, for the opinion of the court was, whether the defendant was duly qualified to use engines to kill and destroy game. For the plaintiff it was contended; 1st, that a legal estate of 100l. *per annum* was necessary to constitute a qualification; whereas here the defendant had only an *equitable* estate as far as respected the part mortgaged; and 2dly, that the estate should be of the *clear* yearly value of 100l. after all charges on it. After argument, the court decided in favour of the plaintiff on the second ground; saying at the same time that the first objection could not be supported. — *L. Mansfield*. The privilege here is given to property, and the *cestui que trust*, the mortgagor, is really the owner; the trustee, the mortgagee, is merely nominal. We consider the defendant's interest in this court just as it would be considered in a court of

Mortgagor in possession, in what case not qualified.

equity: it is an interest subject to the payment of the mortgage; it is a qualification of property; and though it is not necessary that he should have a legal estate, he must have such property in the land as shall produce a clear income of 100*l. per annum*; or it might be carried so far, as that he might have nothing and yet enjoy the privilege. What then are a mortgagor and mortgagee in chancery? one the owner, and the other as having a charge upon the land; and the charge goes along with it. — *Buller J.* In the case of rent-charges the cognizance of the justice is admitted; and in many others they must interfere, as in contracts between landlord and tenant. Neither is there any pretence on the part of the defendant to complain of hardship. Possession is *prima facie* evidence of property. The defendant, therefore must be presumed to be the entire owner: The hard task lies upon the other party; who must make proof of the contrary. If the justice may receive proof of rent-charges and services, what should prevent his doing the like as to mortgages? The only point then is, whether the words *clear yearly value* mean *clear yearly value to the person in possession*? The words of this act would of themselves leave little room for doubt; but when explained and supported by the statutes of *James*, in *pari materia* the words of which are *over and above all charges and reprises*, it can no longer admit of a question, but that it must mean clear value to the person in possession; for by the common rule of construction, all statutes upon the same subject are considered as making one system of law, and consequently the words in the two last statutes must be referred to the statute in question. *Willes* and *Ashhurst Js.* concurred. — Judgment for the plaintiff. *Cald. Caf.* 230.

What shall be deemed sufficient proof of a qualification.

E. 39 G. 3. R. v. Clarke. This was a conviction on 5 *An. c. 14.* for keeping and using a greyhound for the destruction of game without being duly qualified. The conviction was in the usual form, negating specifically each of the qualifications enumerated in 22 & 23 *C. 2.* The conviction then proceeded as follows; “and it duly appears to us the said justices in the presence of the said defendant, that on the 22d *March* 1798 at, &c. before A. B. and C. D. (a), &c. commissioners appointed by an act for granting to his majesty an aid and contribution for the prosecution of the war, then and there acting as such commissioners, did make a declaration in writing, signed by him, that his *annual income* did not exceed 50*l.*, and being examined upon oath deposed that the value of the whole lands, tenements,

(a) The justices before whom the defendant was convicted.

“and

“ and estate of the said defendant was then 70l. a-year and
 “ no more, &c., and that 17l. a-year interest money was
 “ then payable out of the said lands, &c. and claimed to be
 “ allowed the same as interest paid for money charged upon
 “ the said lands, &c. and the same was allowed. And the de-
 “ fendant admits that he made the said declaration and claim
 “ of allowance, &c.; and that the value of the said lands, &c.
 “ has not increased since the time of making such declara-
 “ tion, &c. and that he has not since the said 22d of *March*
 “ acquired other lands, &c.; and that the 17l. a-year inte-
 “ rest money is still payable out of the said lands, &c.”

The conviction then proceeded to state that the defendant, being called upon to make his defence, said that he was possessed of an estate in the parish of *Whitgift* of the yearly value of 100l. and upwards, and produced a witness who said that he knew the defendant's said estate, and he thought it worth 100l. a-year, and that he would give 100l. a-year and upwards for it, but admitted that he would not swear that the defendant's said estate was worth 100l. a-year clear of reprises; and the defendant having no other witness, &c. Wherefore, &c. [It was objected, that it did not appear that the facts on which the magistrates adjudged that the defendant was not qualified, were properly in evidence before them, they having relied on a prior transaction which happened before themselves when acting as commissioners for another purpose, but which ought to have been established on oath at the time of the conviction.

Sed.] per curiam. It must be taken *pro confesso* that the defendant at the time mentioned in the conviction, when he was before the commissioners on the amount of his income, had not then an estate of 100l. a-year in value; it is evidence out of his own mouth. And the witness adduced by him did not contradict this, even if he were credited to the full extent of what he deposed; for he would not undertake to say that the estate was of that value clear of reprises; and as to the deductions being on account of simple contract debts, the contrary appears by the defendant's own shewing; for he claimed the allowance before the commissioners for the interest of money charged upon his estate. Conviction affirmed.
 8 T. R. 220.

Or for term of life] It was doubted upon these words, in what order of qualification an ecclesiastical living shall be ranked, which a man holds not in his own or his wife's right, but in the right of his church. It is allowed to be a life estate, although it may happen to be determined sooner, as by resignation, deprivation, or accepting another living incompatible. But the question is, whether these words shall belong to the former or the latter part of the sentence?

Ecclesiastical
 living.

The

The difficulty seems to be partly occasioned by the disjointed manner of punctuation. But the points are no part of the statute. The statutes themselves are without points; the punctuation is only made by the printer. Abstracted from the punctuation, it should seem that the former part of the sentence, respecting the qualification of 100l. a-year by an estate of inheritance, ought to terminate with the words *per annum*. And that a life estate, being of inferior quality, ought to be coupled with leasehold, whereof 150l. a-year is necessary to constitute a qualification. And so it was determined in the case of *Lowndes, esq. v. Lewis*, clerk, by Lord Mansfield, Mr. J. Ashurst, and Mr. J. Buller, against the opinion of Mr. J. Willes, that a life-estate of less than 150l. *per annum* is not a qualification to kill game. *Cald. Cas.* 188.

Having lease for 99 years of 150l. yearly value] An estate of the value of 150l. *per annum* holden by the party in his own right under a lease of 99 years to trustees, if he and others should so long live, is a sufficient qualification; and leases of this kind have always been so deemed. *Earl Ferrers v. Henton.* 8 T. R. 506.

Other than the son and heir apparent of an esquire] Esquire, *escuyer*, *scutarius*, called by the Saxons *schilt knaben* or *knapen*, (from whence cometh the word *knave*, which anciently signified a servant,) is a name of dignity next above the common title of gentlemen and below a knight. Heretofore he was attendant, and had employment as a servant, waiting on such as had the order of knighthood, bearing their *shields*, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374. 462. 687.

Or other person of higher degree] In the order of precedence, the heralds, next below knights and their sons, and above esquires, rank (1) colonels, (2) serjeants at law, and (3) doctors in the three learned professions. 1 *Bl. Com.* 405.

M. 26 G. 3. Jones v. Smart. This was an action to recover a penalty for killing game, by 5 & 9 *An. not being duly qualified*. The question was, whether a diploma from *St. Andrew's* in Scotland, appointing the defendant *doctor of physic*, gave him a qualification under 22 & 23 C. 2. c. 25. to kill game? For the plaintiff it was argued, that supposing him to have the same rank as a doctor of the *English* universities, yet he is not such a character as was meant to be qualified by

Doctor of physic
of a Scotch uni-
versity.

by the stat. of C. 2. The qualification claimed must be derived from construing the words, *or other person of higher degree* in the nominative case, and supposing that every person of higher degree than an esquire is thereby qualified. That this is not the true construction of the stat. is clear by the case of *R. v. Utley*, 24 G. 3. (a) And supposing the doctors of the two *English* universities have the right contended for by the present defendant, (which is a very doubtful matter,) yet this diploma does not confer such a right. *Contra*. It was contended; 1st, That on the construction of 22 & 23 C. 2. every person as a member of the civil state, who is an esquire or superior in rank, may kill game; 2dly, That a doctor of physic who has taken his degree in *England* is such a person; 3dly, That a *Scotch* diploma confers the same privileges. — The court took time to consider, but *L. Mansfield* then said, that as to the latter ground he had no doubt, that all privileges granted by the statutes to the universities were confined to our own, and did not extend to *Scotland*, or other foreign universities; which were governed by their own particular laws and customs. But that the general question upon the construction of the stat. of C. 2. should not pass undecided. — Afterwards the court delivered their opinions *seriatim*. — *L. Mansfield*. This is an action brought by the plaintiff against the defendant for using a gun for the purpose of killing game not being duly qualified. The case states that the defendant rested his justification upon a diploma from *St. Andrews*, in *Scotland*, conferring on him the degree of doctor of physic. Two objections have been raised; First, that under this diploma the defendant had the same rights and privileges conferred upon him as are acquired by a degree bestowed by the *English* universities. 2dly, The doctors in the learned professions are of higher degree than an esquire, and therefore

(a) The case of *R. v. Utley* was upon an information on the game laws, and a conviction of the defendant on the statute of C. 2. as “not being the eldest son of an esquire, or of other person of higher degree.” — It was moved to quash this information on the insertion of the word *of*; and contended, that tho’ this was copied from the precedent in *Burn*, it was not warranted in law, for that by this construction, neither an esquire nor a knight would be qualified as such. — *Buller J.* said, that the legislature seemed to him to have taken it for granted that an esquire or other person of higher degree would have a sufficient estate to qualify him, and therefore they had neglected to do it expressly; though there was a case in *L. Hardwicke’s* time, where the word *of* was rejected, and no notice taken. However, he was of opinion that the conviction should be affirmed: And it was so. 1 T. R. 413.

by 22 & 23 C. 2. are exempted from the penalties of the game laws. The stat. of 22 & 23 C. 2. has these words, "*other than the son and heir apparent of an esquire, or other person of higher degree.*" For the defendant it has been contended that *other person of higher degree* relates to the esquire himself, and means that a person of higher degree than an esquire is qualified; whereas on the other side it is contended, that it means "*other than the son and heir apparent of an esquire, or the son of any other person of higher degree.*" To be sure, absurd consequences may seem to follow from giving a privilege to the son which the father has not: but the question is, has the statute done it or not? I wish to have the general point determined because of the consequences: The court considered the point before in *R. v. Utley*, and there they held that the statute meant the *sons of other persons of higher degree*. On full consideration I am not ripe to vary from the opinion given in that judgment. All the precedents are so; *Burn's* precedents give the same construction; but what struck me most was this; the drawer of the stat. of C. 2. certainly had the former stat. of *Jac. 1.* in his view; for though it does not follow the other statute throughout, yet it does in that clause, and that does not admit of a doubt, for there the word "*of,*" is expressly inserted. I cannot therefore unnecessarily vary from the decision that has been given; I say *unnecessarily*, because I am satisfied on the other ground of the opinion I delivered the other day. On that ground there is not a colour for saying that the defendant is qualified by the act of union. It is true that by the 4th article of that act, the *Scotch* have the same general privileges as the *English*; but then they must have the same qualifications, otherwise they come not within the same description. For the general article, which declares there shall be a communication of all privileges, can only mean such as are of a general nature: A burgher of *London* is endued with certain privileges, to which a burgher of *Edinburgh* has no claim; so in every case where a privilege is of a qualified nature, it must be understood with that qualification; a doctor of the *English* universities may become a member of the college of physicians, may plead in *Doctors Commons*, and has various other privileges from which a *Scotch* Doctor, as such, is excluded; the qualification therefore must be from *Oxford*, or *Cambridge*. In like manner, the statute allowing men of certain degrees to have certain dispensations for holding two livings necessarily refer to such degrees only as are obtained in an *English* university; for the church of *Scotland* is distinct from ours, and admits not of the same rules. Therefore whatever rank the defendant may hold by courtesy, he is not in point of law to be considered as a doctor to this purpose.

purpose. — *Willes J.* It is my misfortune to differ from the rest of the court on the construction of the stat. of C. 2. The case of *R. v. Utley* came before us on a motion to quash a conviction on account of the word “*of*” being inserted before the words, “*other persons of higher degree.*” I find by looking at my own paper book that the case was but slightly argued, and the court principally relied upon the ground of all the precedents having been in that form. I adopted that opinion at that time; but I now retract my assent to that determination for three reasons; 1st, The game laws are already sufficiently oppressive, and therefore ought not to be extended by implication; 2dly, Because I think that in grammatical construction and propriety the words “*other persons*” must be taken to be in the *nominative* and not in the *genitive* case; 3dly, Because a different construction is unnatural and unreasonable, and must be productive of endless inconvenience and absurdity. First, nothing can be more oppressive than the present system of the game laws. We are told they arose from the old forest laws, which restrained the right of killing game to much narrower limits; and hence that these new regulations encroach on no privileges to which we were before entitled; but on the contrary are mild when compared with the sources from whence they flow. *Blackstone*, however, in 2d Book of his Commentaries (c. 27.), holds a different language: And wherever a law is productive of tyranny, I shall ever give my consent to narrow the construction. 2dly, According to grammatical construction, I think the words “*other persons of higher degree*” must be taken in the *nominative* case, for want of the word “*of*”, and I am the more confirmed in that opinion, for where the legislature meant the *genitive* case, they have expressly inserted the word “*of*,” as in 1 Jac. 1. c. 27. and 9 An. c. 5., which relates to qualifications to sit in parliament. But 3dly, what I most rely on, are the many absurdities which must flow from a different interpretation. The eldest son of a barrister at law, or of a captain in the army or navy, will be qualified as such, and yet the father himself will not; even a peer who is not qualified by property will not be privileged to kill game, though his son who claims through him will. The act could never mean to annex the qualification to land only; for no landed estate however large will confer the title, but it must be acquired either by office, the king’s patent, or some of the means laid down by *Selden* and *Camden*. A lord of the manor is certainly not an esquire by virtue of his manor, or royalty, though in common acceptance he is considered as such. This is evident from the 2d sec. of 22 & 23 C. 2. s. 25., which empowers lords or manors of other royalties,

not

not under the degree of an *esquire*, to appoint gamekeepers, but no lord of a manor under that rank can make such an appointment, whatever his estate may be. On the other hand, was ever an *esquire*, since the passing of this act, convicted on it? If no such instance can be produced, that shows the general sense of the nation as to this act, and is a much more powerful argument, and has greater weight with me, than any faulty precedent in *Burn*. From the preambles of the statutes on this subject, it is plain they are chiefly pointed against persons of low degree, to prevent mechanics from leaving their employments to destroy the game, to the prejudice of noblemen, gentlemen, lords of manors, and others. For these reasons I think gentlemen of this description ought not to be deprived of their amusements, and this is my opinion on the general import of the act; how far it may affect the present question is another matter. As to the 2d point; if an *esquire* as such is qualified, I am likewise of opinion that *doctors* are so. To this it is objected, that at all events a person who has not taken his degree in *England* is not to be considered in the light of a person qualified by the same means as those are. But this objection is in my mind done away by the 4th article of the union; which enacts "that there shall be a communication of all privileges, except where it is expressly provided to the contrary." As to their being excluded by the college of physicians, that is merely the result of a local institution. However, as the rest of the court are against me on the first point, I shall give no further opinion upon this — *Asburst. J.* I see no reason to depart from the construction which has been put upon the stat. 22 & 23 C. 2. by this court in the case of *R. & Utley*. The game laws are to be considered as positive rules, rather than as founded on reason, therefore it is safer to adopt what they have actually said, than to suppose what they meant to say. Though by the stat. of *Jac. 1.* rank as well as property gave a qualification; yet under this stat. of C. 2. a man can only be qualified by means of property; but said the legislature, the heir apparent, who is in the line of succession, shall likewise be qualified, from a supposition that the *esquire* was so already; according to which construction I cannot think that it was in their intention purposely to exclude the father, but in fact they have done it. And the matter is put out of all doubt by the stat. of *James*, which expressly excludes them, and so does the stat. of C. 2. as effectually in my opinion. The blunder has been adopted perhaps without meaning it; this appears to me from the wording of the clause, for it should seem strange that in fixing the qualifications, they should begin with property, ther

go to a derivative qualification, and then return to a very large description of original ones, namely, quality and degree. In a grammatical sense also, it must be taken to be in the *genitive* case, in the same manner as if the word "*of*" had been actually inserted. I see no reason to depart from the construction put upon the stat. C. 2. in *R. v. Utley*, as founded on the precedent in *Burn*; nor can any inconvenience result from it, for the legislature may hereafter extend the qualification if they think proper. It is not necessary to say any thing upon the other head; if it were, I should agree with my Lord.—*Buller J.* The case of *R. v. Utley* did not pass with so little argument as my brother *Willes* supposes; for I remember it was argued very fully, and the grounds of our decision were, 1st, The constant form of convictions on the game laws, which ought to have great weight with the court: 2^{dly}, From a comparison of the several acts relating to game. But notwithstanding that decision, if I saw any reason to alter the opinion which I then gave, I would be ready to do it and correct my mistake. But upon full consideration, in my opinion that judgment was right. 1st, Taking this clause of C. 2. in a grammatical sense, had the exception extended no farther than to "*other persons of higher degree*," still I should have thought that the word "*of*" was intended; and that the word "*other*" was to be understood in the *genitive* case; but I am confirmed in my opinion by the manner in which the clause proceeds; for the words immediately following are, *and the owners and keepers of forests, parks, chases, and warrens*. Now had the preceding part of the sentence *or other persons of higher degree* been intended to have been taken in the *nominative* case, why did the legislature alter the mode of expression? for when they speak of other persons to be exempted in their own right, they change the words. Again it is asked, what reason is there for excepting the eldest son alone, and not the younger? The only reason that can be given is, because he is the presumptive heir to the real estate, which is a further argument for supposing that landed qualification was the immediate object of the statute. And in fact this act of C. 2. had that principally in view; for it repeals the personal qualification of the stat. of *James*, and leaves no other but that of land, with the exception in favour of the heir apparent on account of his right of succession. And we may observe that there is the same exception introduced into the act of qualifications of members of parliament. I have no doubt that the legislature took it for granted that esquires themselves would be qualified in respect of their land, and for the reasons assigned extended the qualification to their eldest sons. So that had the legislature been asked at the time
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of making this act, whether they intended to exclude the younger sons of *dukes*? they would have answered *no*; but I am as firmly persuaded, that had the same question been put to them respecting *doctors*, they would have answered in the *affirmative*. Be this as it may, we are bound to take the act as they have made it; a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to consider, whether such a law that has been passed is tyrannical or not. It has been said that this act is only pointed against persons of low degree, as appears from the preamble; to consider the preamble of an act is to be sure in general a good mode to come at the meaning of the legislature; but it does not assist us in this case, for we gather from the enacting part of the stat. that a person who has a freehold of 99l. *per ann.* or a leasehold for 99 years of 149l. *per ann.* is not qualified; but can it be said that either of these is a mean or vulgar person? Thus far we have been considering the stat. of C. 2. alone; but now consider it as coupled with the former statutes which are in *pari materiâ*. In the stat. of *James* the same words, *other persons of higher degree* are used, and there it is clear they are used as part of the description of the sons; for the particle "*of*" is expressly prefixed; now if the stat. of C. 2. is any ways doubtful, we must expound it by the stat. of *James*, and that is confined to sons alone. But the strong ground of all is, that all the acts relative to game have been from time to time restrictive of the right to kill game: they abolish some qualifications and raise the others, and consequently lessen the number of qualified persons, and no one statute can be construed into an enabling one; this is decisive. There is not a pretence to say that a doctor of physic is within the exception of the statute of *James*; then if he is not within that statute, how can he be said to be qualified under that statute of C. 2., which is a restraining one, and gives no new qualification whatever? As to the other question, whether a doctor of physic of the defendant's description is qualified? I think he is not, on another ground. But on this head I refer generally to what my Lord has said. — Judgment for the plaintiff. 1 T. R. 44.

Volunteer captain not made an esquire by the lord lieutenant's commissioning him as such.

Talbot v. Eagle. E. 49 G. 3. — This was an action brought to recover the penalty of 5l. given by the 5 *An. c. 14. s. 4.* for killing game, not being duly qualified. The defendant to prove his qualification, gave in evidence a commission signed by the lord lieutenant of the county of *Suffolk*, constituting the defendant's father the captain commandant of a corps of volunteer infantry, and styling him an esquire, and also the Gazette announcing his appointment, and he relied on the 44 G. 3. c. 54. s. 26. which enacts that all officers

officers in corps of volunteers, having commissions from lieutenants of counties, shall rank with the officers of his majesty's regular forces. There was a verdict for the plaintiff; and upon moving to set aside the verdict and enter a nonsuit, it was contended that by this appointment the father had been created an esquire. But the court said, that the statute meant only the same military rank; the lord lieutenant could not confer honours; there was no pretence to call this gentleman an esquire, and they refused the rule. 1 *Taunton's Rep.* in C. P. 510.

And all lords of manors or other royalties, not under the degree of an esquire, may by writing under their hands and seals authorize one or more gamekeepers within their respective manors or royalties who being thereto so authorized may take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person who by this act is prohibited to keep or use the same. And moreover, any such gamekeeper (or other person being thereunto authorized by warrant (H) of one justice), may in the day time search the houses, out-houses, or other places of any such person by this act prohibited to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting-dogs, ferrets, cony-dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, snares, or other engines aforesaid, and the same may seize, detain, and keep for the use of the lord of the manor or royalty where found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree. 22 & 23 C. 2. c. 25. s. 2.

And if any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, cony-dogs, hays, lurchers, nets, tunnels, lowbels, hare-pipes, snares, or any other instruments for destruction of fish, fowl, or other game, and shall not give a good account before a justice, to the satisfaction of such justice how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall forfeit for every offence not under 5s. nor above 20s., half to the informer, and half to the poor, to be levied by distress, the overplus, if any, to be rendered; for want of distress, to be committed to the house of correction not more than one month nor less than ten days, there to be whipped and kept to hard labour. And if any person so produced or charged

Gamekeepers
seizing dogs and
engines used
within the pre-
cincts of manors.

Searching for
dogs and en-
gines.

20s. penalty for
keeping or using
dogs and en-
gines.

with the said offence shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. 4 & 5 W. c. 23. s. 3.

All lords of manors or other royalties or persons authorized by them as gamekeepers may within their manors or royalties oppose and resist such offender in the night time, in the same manner, and be equally indemnified for so doing as if the fact had been committed in any ancient chase, park, or warren inclosed. s. 4.

And no *certiorari* shall be allowed to remove any conviction or other proceeding concerning any thing in this act, unless the party first become bound to the prosecutor in 50*l*. with such sufficient sureties as the justice before whom such conviction shall be, shall think fit, to pay unto the prosecutors within a month after the conviction confirmed, or *procedendo* granted, full costs and charges to be ascertained on their oath; and in default thereof, the justice shall proceed to the execution of the conviction. s. 7.

5*l*. penalty for keeping or using dogs and engines; and the same to be seized.

But by a subsequent statute 5 An. c. 14. s. 4. If any person not qualified by the laws of this realm so to do shall keep or use any greyhounds, setting dogs, bays, lurchers, tunnels, or any other engines to kill and destroy the game, and shall be therefore convicted (IKL) on the oath of one or two credible witnesses before one justice, he shall forfeit 5*l*. half to the informer, and half to the poor of the parish where the offence was committed, to be levied by distress and sale of the offender's goods (M); for want of distress, to be sent to the house of correction (N) for three months for the first offence, for every such other offence four months.

And any justice, or lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified, and may keep the same to his own use without being accountable to any person for the same. s. 4.

Unqualified person being out with a qualified person.

If any person] H. 13 G. 3. R. v. Newman. An information was moved for against a justice, for convicting two persons for using greyhounds to destroy game; which persons were themselves unqualified, but were out with a qualified person; which they pleaded in their defence, and that the dogs were not their own. The justice said he knew it, and thereupon convicted them.—On behalf of the justice, it was contended, 1st, That the defendant was justified in what he had done; for that an unqualified person was liable to the penalty, though he was in company with a qualified person. 2dly, That if the law were otherwise the court would not interpose by granting an information against the magistrate. But the court were, on the first point, of opinion that the two

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unqualified persons were protected by their being in company with the qualified one; and consequently that the magistrate ought not to have convicted them. But upon the merits, they discharged the rule, the magistrate paying the costs. *Loft. 178.*

But at *Stafford* spring assizes in 1804, in an action for killing game, by coursing, the defendant not being qualified, *Williams* Serjeant for the plaintiff, insisted (and in this he was confirmed by Mr. Justice *Lawrence* that, though a qualified person may take his servant or servants to assist him to kill game, he cannot qualify them to kill it; neither will his presence protect an unqualified person, not being his servant, who goes for the purpose of taking the amusement of coursing. But if such person take an active part by beating across the fields or on open lands, and join in the diversion in the same manner with a qualified person, he is as much liable to the penalties as if no such qualified person were present. The learned judge observed, that the contrary was the usual practice; but that practice, he said, would not alter the law. — *Mss. by Mr. Durnford.*

R. v. Taylor. B. 52 G. 3. The defendant was convicted for having kept and used certain dogs to kill and destroy game. It appeared upon the conviction that the defendant pleaded that he was a servant or groom to *T. S.* and was then and there attending his said master by his especial order as a servant. And the said *T. S.* upon his oath said that he the said *T. S.* had formerly paid a yearly duty of 5s. for the defendant and returned him as an occasional groom, but the said *T. S.* paid the defendant yearly wages for his services, and that the dogs were his the said *T. Shaw's*, who was duly qualified and licensed, and that the defendant had no dogs of his own, nor was he hunting or pursuing game but in the company and under the direction of the said *T. S.*

The conviction stated evidence “that witness saw defendant running after and encouraging the said dogs in the pursuit of a hare, and acting as the whipper in of the said dogs: upon this evidence he was convicted.”

Against the conviction the case of *R. v. Newman* was cited, and the above case (at *Stafford*) was mentioned, and it was urged that the person there proceeded against was not the servant, and did not appear to have any connection with the qualified sportsman, and that he might have been an intruder upon the qualified man, and have used the dogs against his will. The court quashed the conviction upon the principle that the master's protection extended to his servants. 15 *E. R.* 460.

(In a note to the above case of *R. v. Taylor*, Mr. *East* remarks, “I have reason to think upon inquiry, that there were spe-

cial circumstances in that case which governed the decision of the learned judge. The defendant with some companions of his own, all unqualified, had gone out together with the intention of sporting, and had afterwards joined, for ought appearing, without invitation, the company of a qualified sportsman, and had taken an active part in the killing of the game.)

In a case, of *Lewis v. Taylor*, which was an action to recover a penalty upon the stat. of *Ann.* for using a greyhound for the purpose of killing game, being unqualified so to do; and which came on to be tried at the *Bucks Lent Assizes*, 1812, before *Heath J.*, it appeared in evidence, that the defendant being unqualified was in company with another person who was qualified; that the dog in question belonged to the qualified person; that they together coursed a hare with this dog; that the defendant beat the bushes for game; that the hare was killed, and that the defendant took it up. At the trial, the counsel for the defendant objected, upon the case of the *King v. Newman*, that the defendant was protected by the presence of the qualified person, and his lordship was inclined to nonsuit the plaintiff. The counsel for the plaintiff, in answer, quoted the above case, which was tried before *Lawrence J.* And *Heath J.*, after observing that he had conferred with *Mr. J. Lawrence*, upon that case, added that he considered it good law: and thereupon a verdict was given for the plaintiff, with liberty to move to set it aside and enter a nonsuit. This motion was made in *Easter term*, and in the following *Tr. term*, *Ld. Ellenborough Ch. J.* without hearing counsel against the rule, held the last above cited case to be erroneous in its decision, and consequently that the case of *R. v. Newman* was justly decided. *Mss. K.*

In the report of this case by *Mr. East*, published since the above note went to press, *Lord Ellenborough's* observations are stated as follows: "There is no evidence against this defendant upon the charge of using a greyhound for killing the game. The dogs belonged to a qualified person who was out with them at the time. This is not a solitary amusement, and there is nothing to prevent a qualified person from taking others with him to aid him in the pursuit of the game; and he is the person using the dogs; the others have no other use of them than as his servants, and contemplating with him the pleasure of the chace. The learned Judge's first thoughts were best. If indeed an unqualified man used his own greyhound for the purpose of sporting, though in the same company with a qualified person, the case would admit of a different consideration; but there can be no ground for recovering the penalty against this

this defendant, who went out with the dogs of another who was qualified, and which other was using them himself; the defendant's picking up the hare after it was killed, is no using of the dogs to kill the game. We had occasion to consider this question very lately in the case of a servant. (*R. v. Taylor, supra.*) The other judges agreed, and Bayley, J. noticed that the words of the stat. of *Ann.* are, *keep or use*; but this defendant neither kept the dog, nor was it under his controul at the time it was used to kill the hare.—Rule absolute for a nonsuit. 16th *East's Rep.* 49.

Note. The case of *Molton v. Rogers*, 4 *Esp. N. P. Cases*, 215, was cited for the defendant, as well as that of *R. v. Newman*, and its authority was not denied. *Molton v. Rogers* established the same doctrine as was agreed to in this present case of *Lewis v. Taylor*.

It seems therefore to be now settled, that an unqualified person may course game in company with a qualified person, if the dog belong to the latter, without being subject to any penalty for using a dog, being unqualified.

In the case of *Pesball v. Layton*, M. 29 G. 3. L. Kenyon Ch. J. said, that, where several unqualified persons offended by going out together and killing a hare, only one penalty can be recovered, though the prosecutor has his election which he will sue. 2 *T. R.* 712.

Several unqualified persons being out together, only one penalty can be imposed for one act.

So in the case of *R. v. Bleasdale* and another, T. 32 G. 3. Which was a conviction on 5 *An. c. 14. s. 4.* for using a greyhound to destroy game without being qualified; for which the defendants were convicted in 5l. *each*. The court, without hearing any argument, said, the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty. And they said that this point had been several times decided; in *Hardyman v. Whitacre* (a) and in other cases.—Conviction quashed. 4 *T. R.* 809.

E. 13 G. 3. *Pallant v. Roll*. Trespass, for that the defendant, being a dissolute person, neglecting his employment, and following hunting and other game, and by no means qualified by law so to do, broke and entered the plaintiff's closes, and with dogs, guns, and other engines for destruction of the game hunted upon the said closes, trod down the grass, &c. against the form of the statute. On not guilty pleaded, and issue thereon, a verdict was found for the plaintiff at *Bury* assizes, for 1s. damages, subject to the opinion of the court upon the following case. The defend-

A huntsman going out with hounds without his master.

(a) *Bull. N. P.* 189. This case of *Hardyman v. Whitacre* is more fully reported in a note to *Barnard v. Gosling*. 2 *E. R.* 573.

dant was not qualified in his own right to kill game, but was and for three years had been a menial servant and huntsman to *Robert Leman*, esq. a gentleman of 1500l. a-year estate, who had kept hounds for 20 years; and the defendant went out by his master's order with the hounds, his master not being present, and was beating over the plaintiff's grounds. The plaintiff desired the defendant to go off his land, which he refused, and at length found a hare, and hunted it over several pieces of land mentioned in the declaration, two of which were sown with wheat. The question was, Whether, if the court should be of opinion that the defendant is not a dissolute person, or the like, under the statute of 4 & 5 *W.* the plaintiff can recover against him in this action upon the statute? or whether he ought to have brought a common action of trespass for breaking his close? By the court: We have no doubt but that the defendant is not a dissolute person within the meaning of the act. The only real question is, Whether, as this action is framed, the plaintiff can recover any thing? He certainly cannot have his full costs. If he cannot recover any thing but his nonsuit, he must pay costs. If he can recover as upon a common action of trespass, he saves his costs. Now certainly any man might have always brought an action of trespass for hunting upon his ground. For this injury, among others, the statute of *Gloucester* gave costs as well as damages. The statute 22 & 23 *C. 2. c. 9.* to prevent vexation lowered the costs, and if less than 40s. recovered gave no more costs than damages. This statute of 4 & 5 *W.* restored full costs again, even in case of small damages recovered against dissolute and other persons described in the said statute. But as we are of opinion, that the defendant is not within these descriptions, the offence falls back upon the statute of *C. 2.*, whereby the plaintiff shall recover no more costs than damages. And the verdict was entered by consent, that the jury find the defendant not a dissolute person, but guilty of the trespass, damages 1s. costs 1s. 2 *Black. Rep.* 900.

[*Not qualified by the laws of this realm.*] In the case of *R. v. Chandler*, *T. 12 W. Holt* Ch. J., in delivering the opinion of the court upon a conviction for deer stealing, said that in these convictions by justices of the peace in a summary way, where the ancient course of proceeding by indictment and trial by jury is dispensed with, the court may more easily dispense with forms; and it is sufficient for the justices, in the description of the offence, to pursue the words of the statute, and they are not confined to the legal forms requisite in indictments for offences by the common law. *L. Raym.* 581.

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Though it was said in *R. v. Matthews*, 10 *Mod.* 26. that it was sufficient to say in a conviction generally that "the defendant was not qualified by the laws of this realm" to keep or to use a dog, &c. for the destruction of game; it has been holden in later cases that it is necessary to negative in the conviction each particular qualification.

H. 12 G. R. v. Hill. The defendant was convicted for unlawfully keeping a lurcher and a gun to kill and destroy the game, *not being qualified by the laws of this realm so to do.* And the conviction being removed into the king's bench by *certiorari*, was quashed; because it was only averred generally that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the statute, as to degree, estate, and the rest. 2 *L. Raym.* 1415.

Each particular qualification must be negated in the conviction.

M. 12 G. 2. R. v. Bryan. This was a conviction on the gin act; exception was taken that there was no averment, that it was not sold to be used in medicine; and the cases on the game act were mentioned, where in convictions it is necessary to exclude all the qualifications for killing game. On the other hand, it was insisted that the reason of that was, because those were in the enacting clause, whereas this about medicine comes in by way of proviso, and is by way of defence to be shewn on the defendant's part. And for that purpose was cited *R. v. Theed*, *M. 11 G.* where in a conviction for obstructing an excise officer on the 8 *An. c. 9.* it was objected that, it not being averred to be in the day, it should have been shewn that there was a constable present, which is made necessary in the night; but it was held to be well, and that its being in the night should have been shewn on the defendant's part. And by the court, This is brought within the general enacting clause; and the true distinction is, where the extenuation comes in by way of proviso or exception. And the conviction was confirmed. 2 *Str.* 1101.

Finally, in the case of *R. v. Jarvis*, *H. 30 G. 2.* The conviction set forth that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net, for the destruction of the game; and that he the said *Jarvis* was not then anywise qualified, impowered, licensed, or authorised, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by *L. Mansfield Ch. J.* It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out: Otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. The *obiter* saying in 10 *Mod.* (if it were a book of better authority than it is)

would signify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament and a proviso in an act of parliament. In the case of *R. v. Marriot*, where the witness swore only generally, it was holden insufficient: And the justices who convicted upon the evidence of the witness can have no other or further ground to go upon than what the witness swears. In the case of *R. v. Hill*, it is the very point established and settled, that the general averment is not sufficient, and that it must be averred that the defendant had not the particular qualifications mentioned in the statute. In the case of *Bluet, qui tam v. Needs*; (*Com. R.* 522.) the general averment of the defendant's not being qualified was holden to be sufficient, upon an action, though insufficient upon a conviction; for in the examination of the question at the trial of an action, the qualification may be gone into: The distinction is obvious between an action and a conviction. In the present case, the witness swears generally that the defendant was not qualified. The justices adjudge it generally, only. The stream can go no higher than the spring head. So the conclusion, which the justices draw from the testimony of the witness, must be as general as that testimony. In the case of *R. v. Pickels*, *M.* 19 *G.* 2. it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 *C. 2. c. 25.* ought to be negatively set out in convictions. And the only question there was, Whether it was necessary to add the inferred or argumentative qualification, collected from the 5 *An. c. 14.* but not mentioned in the 22 & 23 *C. 2. c. 25.* of his not being lord of a manor? *Exceptio probat regulam*: Nor was the general rule at all doubted or disputed in that case. In indictments upon the 8 & 9 *W. c. 26.* for having a coining press, every thing which shews that the defendant had no authority, must be negatively set out: And so it was done in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be settled, by the constant tenor of all the authorities; and I think upon very good reason (if there was need to enter into the reason at large, after it has been fully settled already). — Mr. J. *Denison* concurred, and said, it was a clear case, and that it was fully settled and established, that in these convictions the want of the particular qualifications mentioned in the 22 & 23 *C. 2.* ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he had not the qualifications which are specified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23

C. 2.; and that was the case of *R. v. Pickels*. But however in that case the present point was established, and taken to be indisputable. There is a known distinction between exceptions in a statute by way of proviso (which need not be set forth) and those in the purview of the act; and to this point there is a very strong case (*R. v. Bell*, *Fost.* 430.) upon an indictment for having coining instruments in his custody. It was said that in a conviction it is sufficient to pursue the words of the act of parliament; but I think that is not so, and there are many cases where that has been ruled otherwise. Among other instances, it was determined in *R. v. Chapman*, *E. T.* 28 G. 2. upon a conviction of a person for robbing an orchard, which the court held not sufficient; but it ought to have appeared of what and how the orchard was robbed, that they might judge whether it were a robbery within the meaning of the 43 *Eliz. c. 7.* — Mr. J. *Foster* also concurred, and said that on negative acts of parliament the point is fully settled and established, that the particular qualifications mentioned in the purview of them must be negatively specified in convictions made upon them. — And, by the court unanimously, the conviction was quashed. 1 *Burr.* 148.

[*Shall keep or use*] *H. 8 G. R. v. Filer*. Conviction for *keeping* a lurcher to destroy game, not being qualified. Keeping Exception was taken that it was not shewn that he *used* the dog to destroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, the statute is in the disjunctive, *keep or use*; so that the bare *keeping* a lurcher is an offence; and so it was determined in the case of *R. v. King*, *E. 3 G.* which was a conviction for keeping a gun. And it was not doubted by the court, whether the *keeping* was not enough to be shewn, but the only question they made was, Whether a gun was such an engine as is within that statute? and in that case a difference was taken, as to keeping a *dog*, which could only be to destroy the game, and keeping a *gun*, which a man might do for the defence of his house. And the conviction was confirmed. 1 *Str.* 426.

E. 22 G. 3. R. v. Hartley. This was a conviction on Keeping and using. 5 *An. c. 14.* for *keeping and using* a *greyhound* to kill and destroy the game. — On a rule to shew cause why this conviction should not be quashed, it was objected, 1st, That it was not sufficiently stated, that there had been an using of the greyhound (that is) how, and in what manner, and for what purpose. 2d. That it was not expressly and positively averred that he had kept and used a *greyhound* at all; being only set forth, that he kept and used a dog *called* a greyhound, but that it might be called so and yet be another kind

kind of dog; that it might be an *Italian* greyhound, or might be kept for the protection of a house, or other purposes than to kill or destroy the game. — By *L. Mansfield*. Convictions must certainly be precise, that the court may see whether the offence committed falls within the jurisdiction of the magistrate; and must be quashed if not so. In this act there are two offences described, a *keeping* and *using*; and the legislature mean, that there may be a keeping to destroy, &c., which is not of necessity to be proved by an using to that purpose; if it were so, it would be tautologous, for such evidence would be a proving of the other offence: the keeping therefore of a thing prohibited being an offence under the act, it is necessary *prima facie* evidence of a keeping for the purpose prohibited, and it is incumbent upon the defendant to shew that it is kept for another purpose, as that in the present case it is a house dog, a favourite dog, or a particular species of greyhound. The description cannot be more precise unless some particular instance of using is shewn, which if keeping of itself constitutes an offence cannot be necessary. As to other objection, that the averment is defective in stating only that this was a dog *called* a greyhound, I think it positive enough: it must mean the dog of that species generally known in this country. — The other judges concurred. — Rule discharged and conviction affirmed. *Cald. Cas.* 175.

Read v. Phelps. *E.* 52 G. 3. Upon a motion to set aside a nonsuit in an action upon 5 *Ann. c.* 14. for keeping and using a setting dog to kill and destroy game, which nonsuit was directed, because there was no evidence that the dog had been *used* for killing game, it was said that this evidence was not necessary if from other circumstances the jury might infer that the dog was *kept* for that purpose, the words in the stat. being “*keep or use* :” the court held without argument that this rule should be refused. — 15 *E. R.* 271.

What shall be
deemed using.

Use] In the case of *R. v. King* aforesaid, *Parker Ch. J.* said, that walking about with intent to kill game is evidence of *using* the instrument for that purpose. 1 *Sess. C.* 88.

Keeping and
using a gun;
what is evidence
of using.

In the case of *R. v. T. Davies*, *H.* 35 G. 33. which was a conviction on the above statute 5 *An. c.* 14. *s.* 4. for keeping and using a gun for the destruction of game; it appeared on the conviction that on, &c. at, &c. “one credible witness, (*viz.*) *R. Pyndar of Hadson*, aforesaid, (where the offence was committed,) upon his oath, &c. in the presence of the defendant deposed, &c. that the aforesaid *T. Davis* on, &c. at, &c. not having the qualifications, &c. (repeating them) did keep and use a certain engine called a *gun*, with intent to kill and destroy the game; and that he (the witness) was satisfied that the said *T. Davis* did keep and use the said

gun

gun for the purpose aforesaid, from the circumstance of his hearing a gun go off, and observing that it was fired by the said *T. Davis*, who was then walking about a piece of ground in the parish of *Hadson* aforesaid, with that apparent intent," &c.—To this conviction it was objected; 1st, That the witness was incompetent, because he was an inhabitant of the parish where the offence was committed; 2dly, If competent, that his evidence was not sufficient to support the conviction. That the evidence was, that the defendant "did keep and use a certain engine called a gun, with intent to kill and destroy the game;" and if this had been a dog or snare, this evidence perhaps would have been sufficient; but the defendant might have kept and used a gun for a variety of purposes besides that of killing game.—*Lord Kenyon* Ch. J. The first objection is answered by the stat. 27 G. 3. c. 29., which was passed to prevent difficulties of this kind, and to enable inhabitants and parishioners to give evidence in prosecutions where the penalty is given to the parish, provided it do not exceed 20l. With regard to the other objection, here was evidence tending to prove the offence. That being the case, we have no authority to examine further, and see whether the conclusion, drawn by the magistrate, be or be not the inevitable conclusion from the evidence. It is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury: here we cannot say that there was no evidence of the fact for the consideration of the magistrate. In *R. v. Gardiner post*, the defendant was only charged "with having and keeping a gun, being an engine for destroying game."—*Grose* J. of the same opinion. Conviction affirmed. 6 T. R. 177.

Any greyhounds, setting dogs, bays, lurchers, tunnels, or any other engines] *H. 13 G. 2. Hooker v. Wilks*. An action was brought on the 8 G. c. 19. for using a bound to destroy game. And after a verdict for the plaintiff, the judgment was arrested; for the statute of the 5 An. c. 14. has not the word *bound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The statute of the 22 & 23 C. 2. c. 25. has indeed general words *or any other dogs to destroy game*; but this is not a conviction on that statute. 2 Str. 1126. Nor indeed could it have been a conviction on that statute for any penalty in certain for killing and destroying the game; for the statute of the 22 & 23 C. 2. doth not inflict a general penalty upon persons unqualified; who shall kill and destroy the game; but only declares who shall or shall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to seize the dogs, nets, and other

How far penal to keep a hound.

other engines of such unqualified persons. But if the defendant did kill the game, and had the same in his custody, he might have been prosecuted for the penalty of 20s. for such offence, by the statute of the 4 & 5 *W.* hereafter following. — But then the consequence of all this will be, that it is not penal barely to keep a *hound* on this statute of the 5 *An.* : but if any unqualified person shall do so, the game-keepers or others, authorized by a justice's warrant, may seize and keep or destroy the same, by the aforesaid statute of the 22 & 23 *C. 2.*

So in the case of *Reason v. Lisle*, *T. 11 G. 2.* In an action upon the statute the plaintiff declared that the defendant did keep and use a *dog* to destroy the game. It was objected, that he ought to have expressed what sort of dog; for it might be a mastiff or a lap-dog, which might chance to kill game; and the statute only mentions greyhounds, setting dogs, and lurchers; and this being a penal law, shall not be extended by equity. And of this opinion was the court. And judgment was arrested. *Com. R. 576.*

It is necessary to prove the actual using of the gun for the purpose of destroying game.

Any other engines] *T. 11 G. 2. R. v. Gardiner.* It was moved to quash a conviction, for unlawfully having and keeping a *gun*, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game; for it is not said that the defendant *used* the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: And it would have been altogether as well, if it had been said that the defendant had in his custody a *can*e for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for the killing of game, but for the defence of a man's house. And the *whole court* were clearly of opinion, that this conviction was not good. For (as they argued) if the statute is to be construed so largely, as to extend to the bare having of any instrument that may possibly be used in destroying game, it will be attended with very great inconvenience, there being scarce any, though ever so useful, but what may be applied to that purpose. And though a gun may be used in destroying game, and when it is so, doth then fall within the words of the act, yet as it is an instrument proper and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but other-

otherwise it is of lurchers, harepipes, and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game is sufficient to convict an offender; and it will be incumbent upon the defendant himself to prove, that he kept them for other purposes. And the conviction therefore was quashed. After which, *Strange* solicitor-general said, that in the case of *R. v. King, E. 3 G.*—Lord *Macclesfield* said, that he was in the house of commons when this act was made, and he himself objected to the inserting of the word *gun* therein, because it might be attended with great inconvenience. *Andr.* 255. 2 *Seff. C.* 204. 2 *Str.* 1098.

And shall be thereof convicted] *H. 6 G. R. v. Johnson.* (*ante tit. Conviction*). Conviction for keeping a gun, not being qualified. Exception was taken, that there was not a reasonable summons; it was answered, that the defendant appeared at the time and made defence, so that cures all defects in the summons. And by the court, The answer is right. 1 *Str.* 261.

If a conviction before a justice on the game laws state that the defendant was present at the time when the information was read and the witnesses examined, and that when called on for his defence he produced no evidence, and did not require any further time; that is sufficient, without stating that he was previously summoned to answer, &c. *R. v. Stone.* 1 *E. R.* 639.

H. 26 G. 3. R. v. Thomas Spencer Crowther. This was a conviction before a justice on 5 *An. c. 14.* for using a gun. After stating the information, which negatived specifically every one of the qualifications in 22 & 23 *C. 2. c. 25.*, and which disclosed the fact of the defendant's having used a gun and pointers, and killed a partridge; it stated a summons and the appearance of the defendant; who "having heard the same, and the aforesaid deposition of the said *E. Tye* having been read over again to the said *E. Tye* in the presence and hearing of the said *T. S. Crowther*, and the said *E. Tye* having again affirmed his said deposition to be true, in the presence and hearing of the said *T. S. Crowther*, he, the said *T. S. Crowther*, is asked by me, the said justice, If he can say any thing for himself, why he, the said *T. S. Crowther*, should not be convicted of the premises above charged upon him in the form aforesaid: Whereupon, &c."—It was moved to quash this conviction on two grounds; 1st, That the evidence on which it was founded was not given in the presence of the defendant, for on his appearing before the justice the witness only affirmed his former deposition to be true; and *R. v. Vipant, 2 Burr.* 1163. was cited. 2dly, The qualifications required by 22 & 23 *C. 2. c. 25.* were not negatived

The evidence need not negative every particular qualification.

gated by the evidence. The evidence was only general, that what he did was *against the form of the statute, &c.*; and *R. v. Jarvis*. 1 Burr. 154. and *R. v. Wheatman*, Dougl. 332. were cited.—— In answer it was said, That the deposition of the witness having been read over in the defendant's presence, and affirmed by him to be true, was the same as if he had been re-sworn.—— That as to the other objection, the information had negatived every separate qualification, and was so stated in the conviction; and there was no occasion to prove it by evidence. If the information be specific, a general deposition that he is not qualified is sufficient to put the defendant upon proving that he was.—— By the court. The first objection is good: The witness ought to have been re-sworn in the defendant's presence. As to the other point, there is no case in which it has been directly decided, that the evidence should negative every particular qualification. It cannot be so from the nature of the case.

—— Conviction quashed. 1 T.R. 125. *vid. on T. 27 G. 3.*

T. 27 G. 3. *R. v. Thomson*. This was a conviction on 5 An. c. 14. s. 4. stating, according to the precedent (L) the information on 8th Dec. 1786; the appearance of the defendant on the 9th after being summoned; and the plea of *not guilty*, and then proceeding as follows: “nevertheless, “on the said 9th day of Dec. in the year aforesaid, at, &c. “one credible witness, to wit, *R. Taylor* of, &c. cometh “before me the said justice, and before me the same justice “upon his oath, &c. saith that the defendant, on the 7th “day of Dec. aforesaid, in the year aforesaid, at, &c. “(negating the qualifications of 22 & 23 C. 2. s. 23. s. 3.) “*did keep and use a gun to kill and destroy the game*; and “thereupon the said defendant, &c. before me the same “justice by the oath of one credible witness aforesaid, “according to the form of the statute aforesaid is con- “victed, and for his offence aforesaid hath forfeited 5l. “to be distributed, &c.”——It was objected, that it did not appear upon the conviction of what the defendant had been convicted: It only said, thereupon the defendant on, &c. before me the same justice, by the oath of one credible witness, according to the form of the statute, is convicted, and for his offence hath forfeited, &c. Though this was only a conclusion of law, and not an adjudication of the justice. There was nothing to connect it with that which preceded it; such as that “he “is convicted of the premises,” or “in manner and “form aforesaid.”——But the court were clearly of opinion that there was no ground for that objection; but desired it might be argued again on another objection, which they suggested to the counsel, whether the evidence

was sufficiently set forth, so that the court could see by what act the defendant had incurred the penalty; for they observed, that the act of *keeping a gun* was in itself ambiguous, and it must be shewn to be *kept for the purpose of killing game*, in order to bring the party keeping it within the act; it was not like keeping a greyhound or a snare; which could not be kept for any other purpose, and which was expressly prohibited by the act.

—It was argued against the conviction, that it was a fatal objection that the evidence on which the conviction was grounded was not particularly set forth; the evidence stated being merely a repetition of the information, that only the result arising from the facts was set forth; but every part of the evidence ought to have been specially shewn, that the court might have had an opportunity of judging whether the justice drew a legal and proper inference from the facts sworn to, so as to bring the defendant within the penalty of the act. The evidence which was given before the justice, could not be given in the manner in which it was stated in the conviction, for that evidence was the language of the act of parliament, and even if it were given in such a general way, the justice ought to have refused it.—

Contra; the general rule was not disputed that it was necessary to state the evidence particularly in a conviction, but it was insisted that in the present case the evidence was sufficiently stated, it being expressly stated that the defendant *kept and used the gun to kill and destroy the game*, and that this form of conviction had been almost universally used on similar occasions.—*Ashurst J.* If this were a new case, I should most undoubtedly be of opinion that this conviction could not be supported, because I think the evidence should be set forth particularly, that we may judge whether the justice has convicted upon proper evidence. The fact of keeping or using the gun for the purpose of destroying game should appear; but it is only stated here that the defendant kept and used, &c., which is the result of his evidence. Then whether he kept it for the purpose of killing game is likewise a question of law; for an ignorant witness in the country might fancy that a woodcock or rabbit was game. So that it seems to me that permitting this general evidence to be stated, is allowing the witness to give his sentiments on the law as well as on the facts. But as the precedents are usually in this form, and as the conviction in *R. v. Hartley* (*ante*) was similar to the present, it is better to support this conviction, than by quashing it to overturn all former precedents.—*Buller J.* If this precedent had never been adopted, I should have been of opinion that the evidence should have been fully

set

set forth; but after so many convictions have been made in the same form, it would be dangerous to quash the present. The distinction taken in *R. v. Filer* is good law; it is not an offence to *keep* or *use* a gun, unless it be *kept* or *used for the purpose of killing game*. But it is here stated by the evidence, "that the defendant did keep and use a gun to kill and destroy the game." As to the other question respecting *game*, I cannot agree that the witness in swearing that the defendant used a gun to destroy game would be swearing to a question of law; because it is settled by act of parliament, and every man is bound to know what is game. If he swear that to be game which is not so in law, he would be guilty of perjury. Game must be understood in its legal sense.—*Große J.* I cannot give my consent to support this conviction. The justice should return particularly all the facts and the conclusion in the conviction; first, the information, the summons, the appearance, or the defendant's default in not appearing, that the information was read to the defendant, that he was asked what he had to plead, the whole of the evidence particularly, and the adjudication. The witness should swear to the *facts*, and not to the *law*; and in this case it is almost incredible that the witness should have sworn in the manner in which this evidence is set out. The justice should not have received it, if it were offered in this general way, but should have questioned the witness as to the manner in which this gun was kept, for what purpose it was used, and what particular kind of game he killed or attempted to kill. All these particulars should have been specially set forth, in order that we might judge whether they constituted an offence within the act. Here the witness swore to the law, namely, that the defendant *kept and used a gun to kill and destroy the game*. In *R. v. Baker*. 1 Str. 316. a conviction for taking pilchards was quashed because the witness swore generally that the defendant was *guilty of the premises*, which was taking upon himself to swear to the law. I confess indeed that the case of *R. v. Hartley* is of considerable authority the other way. But I would rather choose to decide this case according to that of *R. v. Baker*; because I think nothing can be more mischievous to the country than suffering a justice of the peace to state the conviction generally. And although this conviction cannot be quashed, because my brothers have given their opinions in support of it, yet I did not choose that this question should pass *sub silentio*, especially as this declaration of my opinion may have the effect of inducing justices in future to state the whole matter upon the record.

But the next day, when this case was again mentioned, Mr. J. *Große* said, as the precedent in *Burn*, though it seems

to me a faulty one, has been recognized by this court in *R. v. Hartley*, of which I was not aware before yesterday, I think it must be supported. It might be highly inconvenient to overturn it; and I should be sorry that any opinion of mine should shake the authority of an established precedent; since it is better for the subject that even faulty precedents should not be shaken than that the law should be uncertain.

There was another doubt entertained by the court, namely, whether it sufficiently appeared that the evidence was given in the defendant's presence? but it was overruled. Conviction affirmed. 2 T. R. 18.

In *R. v. Swallow* it was ruled that if it be stated on the conviction that the defendant appeared and pleaded, and that the evidence was given on the same day, the court will intend that the evidence was given in the defendant's presence, though the appearance was at A. and the evidence given at B. 8 T. R. 284.

On the oath of one credible witness] *H. 9 G. R. v. Gage*. The defendant was convicted for using a greyhound in killing hares. Exception was taken to the conviction that the statute had only given the justices jurisdiction to convict upon the oath of one or more credible witnesses, whereas this was upon his own confession, which it was insisted the justices had no power to take. But by the court: The conviction must be confirmed. The intent of mentioning the oath of one witness was only to direct the justices, that they should not convict on less evidence. Suppose the confession had not been before the justices, but before two witnesses who had sworn it; that would be convicting him on the oaths of witnesses: and yet the evidence would not be so strong as this. Here the justices had better evidence than the oath of any single witness; and it is a monstrous thing to say, that a better sort of evidence shall not do.

The conviction may be on the confession of the defendant.

1 Str. 546.

Credible witness] *M. 2 G. 2. R. v. Stone*. A conviction was quashed because the informer was the witness, divers convictions having been quashed for the same reason before. 2 L. Raym. 1545. The same adjudged in the case of *R. v. Blaney*, T. II G. 2. Andr. 240. And in the statute of the 2 G. 3. c. 19. it is recited that in prosecutions on the act of 8 G. c. 19. in the courts at *Westminster*, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

The informer cannot be a witness.

Before one justice] *H. 12 G. R. v. Buck*. It was moved to quash an indictment for killing a hare, this not being a matter

An indictment for killing a hare cannot be maintained.

matter indictable, the statute appointing a summary proceeding before justices of the peace; and a case was cited *R. v. James, T. 1 G.* where an indictment for keeping an alehouse was quashed, because the statute of the 3 C. 2. 3. had directed a particular remedy. And by the court: The indictment must be quashed. 2 Str. 679.

One penalty only can be incurred in one day, though many hares be killed on that day.

Shall forfeit 5l.] T. 10 An. 2. v. Matthews. On a conviction, exception was taken that the person was charged with so many 5l. as he had killed hares in the same day. And the court was of opinion that the offence for which the statute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified go hunting, and kill never so many hares on the same day, he would forfeit but one 5l. for it is but one offence; but if a man keep dogs, and go hunting several days, and kill hares, if it were thus laid, that he such a day kept dogs and killed, and then again such a day, by laying it thus severally, the offence is severed, and he shall forfeit 5l. for each offence. 10 Mod. 26.

So in the case of *Marriot v. Shaw. E. 4 G.* the same point was ruled; where the defendant had been convicted, for that on such a day he kept and used a greyhound to kill and destroy the game at such a place, that on the same day he kept and used a greyhound to kill and destroy the game at another place, and so at a third place, and killed several hares at the said several places. Com. R. 274.

T. 39 G. 3. R. v. Swallow. This was a conviction in the sum of 15l. for three penalties under the game laws, the defendant being prosecuted for that he on three several days, kept and used traps and engines to kill game; the objection was that he was charged with three offences, and the conviction was general, without saying of how many. — The words were, “and thereupon he is convicted, and for his several offences aforesaid hath forfeited the sum of 5l. for each offence, making together the sum of 15l. &c. &c.” Lord Kenyon Ch. J. said, There is no objection to the conviction on the ground that the defendant has been convicted of several penalties. It is the constant practice in actions on the game laws, and not unfrequent in convictions. Even in indictments for capital offences, several offences are sometimes charged, as burglary and stealing in the dwelling-house to the value of 40s. I by no means wish that magistrates in drawing up convictions should set all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the superior courts. The word “convicted” in this case applies to the several offences with which the defendant was charged, and to the evidence given in support of them; and the words following are, “and for his several offences aforesaid, &c.” Taking the whole of the adjudi-

adjudication together, it is evident that the magistrate convicted the defendant in the three several offences charged. Conviction affirmed. 8 T. R. 284.

To the poor of the parish where the offence was committed] In some places a man may stand in one parish (or county,) and shoot into two or three; in such case the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. *Show.* 339. M. 3 W. R. v. *Alsep*.

By distress] T. 9 G. R. v. *Burchet*. The court ordered an attachment (unless cause shewn) against the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when *Eyre J.* only was present, he discharged the rule, because it was only a contempt to the inferior jurisdiction of the justices, and in that case the king's bench never interposes. 1 Str. 567.

But in the case of *R. v. the sheriff of Leicestershire* and others, M. 2. G. 2. an attachment was moved for against the defendants, for replevying three horses, which were seized as forfeited upon a justice's warrant, they being driven in a waggon contrary to act of parliament. The court, though they would not grant an attachment, yet made a rule to shew cause why an information should not go. And on shewing cause, the court thought there was enough to excuse the sheriff; but granted it against *Parsons* whose horses were seized, because he knew that the justices had granted this warrant; but it did not appear that the sheriff did. 1 *Barnardist*. 110.

And in the case of *R. v. Monkhouse*, E. 16 G. 2. The court granted an attachment against the under sheriff of *Cumberland*, for granting a replevin of goods distrained on a conviction for deer stealing. 2 Str. 1184.

And sale] E. 13 G. 3. *Feltham v. Tarry*. The defendant levied money by seizing and selling the plaintiff's goods, on a justice's warrant founded on a conviction; which conviction was afterwards quashed. And it was holden that an action for money had and received then lay for the clear money produced by the sale of the goods. *Bull. N. P.* 131.

For want of distress to be sent to the house of correction] T. 12. G. Hill v. *Bateman*. Before *Raymond Ch. J.* at *Westminster*. The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and though (as it was proved) the plaintiff had effects of his own which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of trespass

The offence shall be considered to have been committed in the parish in which the person stood when he committed the offence. A distress for the penalties cannot be replevied.

If there be goods, they must be distrained upon, before the offender can be committed.

and false imprisonment being brought against *Bateman* for this commitment, the chief justice was of opinion, that the action well lay. 2 *Str.* 710.

Conviction on
5 *An. c. 14. f. 2.*

A conviction on the 4th. se^ct. of the stat. 5 *An. c. 14.* for keeping a dog and gun to kill game without being qualified must be made within three months after the offence committed; and if the hearing of the matter be adjourned over that time, though with the consent of the defendant, a conviction afterwards is bad. *R. v. Tolly.* 3 *E. R.* 467.

Certiorari.

And [no] *certiorari* shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (O) to the prosecutor in 50l. with such sureties as the justice before whom the conviction shall be made shall think fit, to pay the prosecutors full costs and charges, to be ascertained on their oath, in 14 days after the conviction [confirmed], or procedendo granted. And in default thereof the justice shall proceed in execution of the conviction in such manner as if no *certiorari* had been awarded. 5 *An. c. 14. f. 2.*

Upon this act there ought to be a single recognizance of the defendant, and two sureties in 50l.; and a recognizance taken in 25l. each, is not a compliance with the act. *R. v. Dunn.* 8 *T. R.* 218.

In a note to the above case of *R. v. Dunn*, it is made a query, whether the 5 *G. 2. c. 19. f. 2.* The general *certiorari* act, is applicable to the *certiorari* given by the stat. of *Ann.* Since, as it is there observed, the stat. of *G. 2.* refers to judgments and orders, subject to and made upon appeal, and the stat. of *Ann.* gives no appeal in this case. (See the stat. of *G. 2. tit. Certiorari.*) And this doubt expressed by the reporter seems well founded: and if so, the question whether or not a *certiorari* issued upon the stat. of *Ann.* be within time, cannot arise. K.

Note; The word [no] is inserted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

Search for game;
with 20s. penal-
ty for having it.

And the constable, authorized by a justice's warrant, shall enter into and search (in such manner and with such power as in case where goods are stolen, or suspected to be stolen,) the houses, out-houses, or other places belonging to such houses or suspected persons not qualified; and if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search or otherwise) be found, the offender shall be carried before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not, in some convenient time to be set by the justice, produce the

the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, fish, fowl, or other game, any sum not under 5s. and not exceeding 20s. half to the informer, and half to the poor, to be levied by distress, and sale rendering the overplus (if any); for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. f. 3.

Or other game] Rabbits killed in a private warren are not game within this act. 1 L. Raym. 151.

And if any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender shall be discovered. Id. f. 3.

And no certiorari shall be allowed to remove any conviction or other proceeding on this act unless the party convicted first become bound to the person or persons prosecuting in 50l. with such sufficient sureties as the justice shall think fit, to pay to the said prosecutors within one month after the conviction confirmed, or proce-dendo granted, full costs and charges; and in default thereof, the justice to proceed to the execution of the conviction. Id. f. 7.

If any higlar, chapman, carrier, innkeeper, victualler, or ale-housekeeper, shall have in his custody or possession, or shall buy, sell, or offer to sell, any hare, pheasant, partridge, moor, heath-game, or grouse, every such higlar, &c. &c. unless such game in the hands of such carrier be sent up by some person qualified, shall be carried before a justice where the offence is committed (P); and being convicted thereof (in three months after the offence) on view or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5l., half to the informer, and half to the poor of the parish, where the offence was committed, to be levied by distress and sale (Q); for want of distress, to be committed (R) to the house of correction for the first offence three months, without bail or main-prize, and for every other offence four months. 5 An. c. 14. f. 2.

Carriers and others selling or having game in their possession.

Certiorari. See 5 An. c. 14. f. 2. ante, this sect.

See tit. Certiorari as to the mode of obtaining a certiorari.

If any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any person whatsoever, not qualified in his own right to kill game, or being entitled thereto under some person so qualified, the same shall be adjudged and taken to be an exposing thereof to sale within the true intent and meaning of this act and of the st. 5 An. c. 14.—9 An. c. 25. f. 2.

What is an exposing to sale.

(After reciting that doubts had arisen with respect to the meaning of the word "chapman" in the st. 5 An. c. 14.—) *it is enacted that if any person or persons whatever, whether qualified or not to kill game, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heath-game, or grouse, every such person or persons shall for every such offence be subject and liable to the same forfeitures, pains, and penalties as are inflicted by the said act upon higlars, chapmen, &c. for buying, selling, or offering of game to sale.* 28 G. 2. c. 12. s. 1.

If any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession, of any poulterer, salesman, fishmonger, cook, or pastry-cook, it shall be deemed an exposing thereof to sale, within the meaning of this act and of the act 5 An. c. 14. and the forfeitures may be recovered, and penalties inflicted, as under the act of 5 An. or any other act since made for the preservation of the game. 28 G. 2. c. 12. s. 2.

And any justice of the peace, in his county, &c. and lord, within his manor, may take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game from any such higlar, chapman, innkeeper, victualler, or carrier, or any other person not qualified, (a) [which] shall be found in his custody or possession. 5 An. c. 14. s. 4.

And for the better discovery of any such higlar, &c. as shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game, or grouse, it is enacted that any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall in three months make discovery of any higlar, chapman, carrier, innkeeper, alehouse-keeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession, any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted thereof; such discoverer shall be discharged of the pains and penalties hereby enacted for killing or selling such game, and shall receive the same benefit as any other informer shall be entitled to by this act for such discovery and information. s. 3.

Inferior tradesmen killing game.

And whereas great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl, (unless in company with the master of such apprentice duly qualified,) he shall be subject to the penalties of this act, and shall be sued for their wilful trespass, in coming on any person's land, and if found guilty, the plaintiff shall not only recover damages, but full costs of suit. 4 & 5 W. c. 23. s. 10.

It has been doubted what is meant by "inferior tradesmen." In the case of *Buxton v. Mingay*, the question was whether the defendant, a surgeon and apothecary, not qualified to kill game, came within that description.

Who shall be deemed inferior tradesmen.

The case was argued several times at the bar; and the judges were equally divided. For the plaintiff it was argued, that amongst tradesmen no line can be drawn with respect to who are superior and who are inferior, but they are all upon an equal footing as tradesmen; but that the line which the legislature intended to draw was between those that were qualified, and those that were not; so that in this respect every tradesman is inferior who is not qualified. For the defendant, it was urged that every case of this kind ought to be determined on its own particular circumstances, and left to the jury, whether the defendant is an inferior tradesman or dissolute person within the statute. The court being equally divided, no rule in this case was made. 2 *Wilson*, 70. (a).

Exposing to sale] *Warneford v. Kendall*. T. 48 G. 3. Action upon 5 *An. c.* 14. for the penalty of 5*l.* against the defendant for *exposing to sale a hare*, not being qualified in his own right to kill game, nor entitled thereto under any person so qualified. It was proved that the plaintiff went out coursing, and killed a hare on *Shipston* manor, when the defendant, who was employed as a carpenter and woodman by Mr. *Earl* the lord of the manor, and had directions from him to take poachers, came up and took the hare from the dog, and carried it away, notwithstanding the plaintiff claimed it, to Mr. *Earl's* steward, according to his instructions. — Upon the authority of *Molton v. Cheesley*, 1 *Esp. N. P. C.* 123., the judge (*Lawrence J.*) against his own opinion, allowed a verdict for the plaintiff, with liberty to move to set aside the verdict and enter a nonsuit. — Per Lord *Ellenborough* C. J. Was the possession of the defendant such as to constitute an offence and subject him to the penalty under the statute? He did not claim the hare as his property, nor acquire the possession of it for himself, but for his master, on whose manor it was taken; and if this be an offence, no case can be stated in which an unqualified person can innocently come in contact with game. The case of *Molton v. Cheesley* must have been imperfectly stated. — The other judges agreed, and the rule was made absolute. 10 *E. R.* 19.

What is an exposing to sale.

By the yearly mutiny acts, if any officer or soldier shall without leave of the lord of the manor under his hand and

Soldiers.

(a) See the case of *Pallant v. Roll*, *ante*.

shall destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof on oath of one witness before one justice, every officer so offending shall forfeit 5*l.* to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20*s.* in like manner. And if, upon conviction by the justices, and demand thereof made by the constables or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

The statute of 33 H. 8. concerning guns.

The statute of 33 H. 8. c. 6. concerning shooting in crossbows, handguns, hagbuts, or demihakes, although not repealed, seemeth now to be obsolete, and superseded as it were by several subsequent statutes; and a matter more of curiosity than of use; therefore, it is thought unnecessary to insert it here, but to refer the reader to the statute itself.

IV. *Certificate to be taken out.*

Certificate to be taken out.

For the duties imposed upon game certificates, see 48 G. 3. c. 55. (vol. 5. tit. *Assessed Taxes*, sched. L.)

By 24 G. 3. c. 47. Certain stamp duties were imposed upon certificates with respect to the killing of game.

By the 25 G. 3. c. 50. these duties were repealed.

And by §. 2. of this latter act, persons using any dog, gun, net, or other engine for the taking or destruction of game (not acting as a gamekeeper) were to take out a stamped certificate: the duty to be 2*l.* 2*s.*

Sec. 3. placed this duty under the management of the commissioners of stamp duties.

By §. 8. Any person using any greyhound, &c. for the destruction of game, without having taken such certificate, was to forfeit 20*l.*

By §. 15. If any person should be found using (as before), by any person who had obtained a certificate as in that act directed, such person producing his certificate, might demand of the person so using, &c. to produce and shew a certificate issued to him for that purpose, who should upon such demand produce the same and permit it to be inspected; and such persons wilfully refusing so to do, or not having produced and shewn it, refusing, on demand thereof, to give in his christian and surname, and the place of his residence, or giving in any false or fictitious name or place of residence, was to forfeit and pay 50*l.*

By §. 20. The powers of former stamp acts were to be applied for the raising the duties imposed by this act.

Penalties how
to be recovered.

And by *f. 21.* all pecuniary penalties imposed for offences committed against this act were to be sued for and recovered in the courts at *Westminster*, to the use of the plaintiff, if he should recover the same, with costs of suit. But by *f. 22.* the same might be recovered before one justice, who was required upon complaint (C) to summon the party accused (D), and also the witnesses on either side, and upon appearance of the party accused, or in default thereof, (such summons being duly proved,) to proceed to hear and determine the matter in a summary way; and upon due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment for the penalty or forfeiture as was by this act directed therein (E), and to issue his warrant (F) for levying the penalty on the goods of the offender and to cause sale thereof, one moiety thereof to go to the person who should inform and prosecute for the same *within six* calendar months after the offence was committed, and the other moiety to go to the king, after first deducting the necessary charges of recovering the same; but if not sued for *within six* calendar months, the whole to go to the king. (26 G. 3. c. 82. *f. 2, 3. 7.*) And where sufficient goods could not be found to answer the penalty, to commit (G) such offender to the common gaol, or house of correction, (for three calendar months, 26 G. 3. c. 82. *f. 7.*) unless such penalty should be sooner paid. 25 G. 3. c. 50. *f. 21, 22.*

Appeal.

And any person, who should find himself aggrieved by the judgment of such justice, might upon giving security to the amount of such penalty and forfeiture, together with such costs as should be awarded, in case such judgment should be affirmed, appeal to the next sessions, who were to summon and examine witnesses on oath, and finally to hear and determine the same; and in case the judgment of such justice should be affirmed, they might award costs occasioned by such appeal as to them should seem meet. *f. 22.*

Witnesses.

Witnesses not appearing after having been duly summoned, without a reasonable excuse to be allowed by such justice, to forfeit 10*l.* to be recovered in like manner as aforesaid. 25 G. 3. c. 50. *f. 25.*

Penalties may
be mitigated.

Provided nevertheless, that such justice might where he should see cause mitigate any such penalties, as he should think fit, to not less than one moiety thereof, over and above the costs and charges; and no such conviction to be removable by *certiorari* into any court whatsoever. *f. 25.*

But by the 44 G. 3. c. 98. *f. 1.* All former stamp duties (excepting those under the Union act,) were repealed, and by *f. 2.* others were imposed: and amongst them a duty of 3*l.* 3*s.* upon game certificates. By *f. 6.* these duties were still to be under the management of the stamp commissioners;

missioners; and by *f. 8.* the provisions of former stamp acts were extended to the 44 G. 3. c. 98. unless by that act altered.

And no provisions were enacted in this act particularly relating to game certificates; and therefore the several offences enumerated in the 25 G. 3. c. 50. were to be punished according to the several provisions of that act.

How certificates
shall be taken
out under
48 G. 3. c. 55.

By the 48 G. 3. c. 55. *f. 3.* The stamp duty on game licenses imposed by 44 G. 3. c. 98. was repealed; and by *f. 4.* the duties enumerated in sched. L. are to be paid; and according to the rules in that schedule contained. [*See the Sched. fully set out, and its several rules, under the tit. Taxes (assessed,)* vol. 5.] They are to be paid to the collectors of the duties in that act referred to of each parish; and the person paying them in shall obtain a certificate thereof, as in the same act is mentioned. The collector is to give a receipt for the duty, and this receipt upon being delivered to the clerk (or surveyor, where no clerk,) of the commissioners of the assessed taxes acting for the district, shall be exchanged for a certificate, according to the form (N,) at the end of the same act. The receipts are to be entered in books, as directed by the commissioners. No person shall be qualified by such certificate, unless he be qualified by virtue of the laws in being; *and all penalties and forfeitures, actions and suits,* may be prosecuted *for such offences,* (viz. killing game without being qualified,) as if this act had not been made. (Rule 8. of Sched. L.)

Certificate not to
be a qualifica-
tion.

Certificate to be
produced to cer-
tain persons on
demand made.

And by *rule 10.* of same sched. If any person shall be found using any dog, gun, net or other engine, for any of the purposes in this sched. (L.) mentioned, in respect whereof he shall be chargeable by any assessor or collector of the parish, or commissioner acting for the county or place, or by any lord or lady, or gamekeeper of the manor, royalty, or lands, where, &c., or by any inspector, or surveyor of taxes for the district, or by any person assessed to the duties in this schedule, or the owner, landholder, lessee, or occupier of the land, such assessor, &c. &c., may demand from such person the production of a certificate issued to him for that purpose; and he shall produce this certificate, and permit him to read it, and take a copy thereof; if no such certificate be produced, then such person may require him to declare to him his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to these duties; and if he shall wilfully refuse so to do, or shall produce any false or fictitious certificate, or give a false or fictitious name, place of residence or of assessment, he shall forfeit and pay 20*l.* *to be sued for, recovered, and applied, as any penalty may by the acts herein mentioned,* relating to the duties under the manage-

Penalty of 2*l.*
for refusal.

management of the commissioners for the affairs of taxes; *provided that the commissioners before whom the information shall be laid, shall be justices for the county, &c. or place in which the offence shall be committed.*

By *rule 12. sched. L. of 48 G. 3. c. 55.* If any person shall use any dog, gun, net, or other engine for any of the purposes included in this schedule, without having obtained the certificate directed by this act, in order to an assessment for the years in which he shall so use such dog, &c. &c. he shall be liable to the duty of 3l. 3s. in the said schedule mentioned, for that year, and shall also forfeit and pay 20l. over and above the said duty; and the said duty *shall be assessed by way of surcharge*, according to the directions of the said acts; and *the said penalty shall be sued for, prosecuted and recovered by the acts herein mentioned*, (viz. 43 G. 3. c. 161. and 43 G. 3. c. 99.) relating to the duties under the management of the commissioners for the affairs of taxes, or any of the said acts.

By the 48 G. 3. c. 55. *f. 2.* For ascertaining, assessing, collecting, levying, paying, and accounting for the said duties, (viz. those imposed by the 48 G. 3. c. 55.) the powers, provisions, clauses, penalties, matters and things in the 43 G. 3. c. 161. contained, are continued.

And also by *f. 5.* The consolidated and new duties shall be assessed, raised, levied, paid, and accounted for under the provisions and regulations of (several acts therein mentioned, and amongst them of) the 43 G. 3. c. 99.; and all the powers, authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things in such act, shall be duly observed in the execution of this act, so far as the same are applicable to the duties granted by this act.

The 43 G. 3. c. 99. (being one of the acts above referred to by the 48 G. 3. c. 55.) Is an act for consolidating certain provisions relating to the duties under the management of the commissioners for the affairs of taxes.

And by *f. 62.* of this act. One moiety of all penalties and forfeitures imposed by this act, *or any act for granting duties* to be assessed under the regulations of this act (which is the case with the present game certificate duty,) *may*, if sued for within 12 calendar months from the time of such penalties incurred in the manner next herein mentioned, be to his majesty; the other, with full costs, to the informer: and they *may* be sued for in the exchequer by action of debt or information: But the attorney-general may, if he should think any penalty or forfeiture incurred without intent of fraud, enter a *noli prosequi* as to both the shares.

And by *f. 63.* Any such penalty or forfeiture shall be recoverable in the name of the attorney-general by information in the *exchequer*; and in default of the prosecution within the time

time hereinbefore limited, no such penalty or forfeiture shall be afterwards recoverable in any other manner. In all which cases, (except where the same is directed to be paid to the use of the poor,) the whole shall belong to his majesty. And in all such cases where the whole shall be recovered for his majesty, the commissioners for taxes may cause what reward they may think fit, not exceeding one moiety of such penalty or forfeiture, after deducting all charges and expences to be paid to any who shall appear to them to be intitled thereto as informer.

Application of penalties recoverable before the commissioners.

And by *f. 64.* All such pecuniary penalties not exceeding 20*l.* imposed by this act, or any act for granting duties to be assessed under this act, may be recoverable before two or more commissioners for executing this act; and also such of the penalties exceeding that amount, as are directed to be added to the assessment of the duties. And such commissioners shall take cognizance of such offence, upon information or complaint in writing made to them, and upon a summons to the party accused to appear before them at such time and place as they shall fix, or without such summons in case the party shall have been surcharged before them, and shall have appealed against the same; and shall appear upon such appeal before the said commissioners; and such commissioners shall examine into the matter, and determine the same in a summary way; and upon proof thereof, either by voluntary confession, or by oath or affirmation of one credible witness, or otherwise as the case may require, shall give judgment for the penalty, or for such part thereof as the commissioners shall think proper to mitigate the same, not being in any case less than one moiety; and shall assess the same upon the party, and charge the same in the assessment to which the penalty adjudged shall particularly relate, and in addition to the duty, in case the party shall be charged therewith; which penalties so adjudged shall be levied in like manner as the said duties: and the informer shall in all such cases, (except where the penalty is to be paid to the poor of any parish or place, in which case the receiver-general shall pay the same either to the churchwardens or to the overseers,) be entitled to receive from the receiver-general one moiety of the amount of such penalties, in such shares, where two or more of them are concerned, as the commissioners for executing this act shall certify to the commissioners of taxes they are respectively entitled unto: and the adjudication of the commissioners shall be final and conclusive, without power of appealing from the same.

Proceedings of commissioners not to be subject

And the proceedings of the commissioners shall not be removable into any court, or be subject to revision, except where a surcharge shall be made, and a case shall be demanded

manded and stated for the opinion of one of the justices or barons of the superior courts, conformably to any act or acts granting the duties to which such surcharges shall relate. *Ibid.*

to revision, except in certain cases.

Persons giving false evidence before commissioners, and being convicted thereof, shall be liable to the punishments for perjury. And any indictment for perjury, committed in any examination, affidavit, or deposition, before them, shall be tried in the county where the examination, &c. shall be exhibited. *f. 65, 66.*

Penalty on persons giving false evidence.

Upon comparing these latter acts with the former certificate act; viz. 25 G. 3. c. 50., it will be observed, that in the latter acts the penalties not exceeding 20l. may be recoverable before two commissioners, (being also in the case described in rule 10. of *Sched. L.* 48 G. 3. c. 55., justices,) and all penalties (of any amount whatever.) are recoverable in one of the ways pointed out in *f. 62 & 63.*: but there is no power given by them to the single justice, as was given by the 25 G. 3. c. 50. Again, from the judgment of the commissioners, there is by the last enacted statute no appeal, excepting by way of stating a case upon a question of law. By the 25 G. 3. c. 50., an appeal was given. By the last acts a prosecution may be within 12 months.—By the 25 G. 3. c. 50. it was to be within three months.—But now by the 52 G. 3. c. 93. *Sched. L.*, new provisions are made as to the mode of prosecuting, for these penalties: the persons authorized to hear and determine offences relating to using guns, &c., without certificates, being now the two commissioners, or any one justice, he being also a commissioner for executing this act of the 52 G. 3.; and a power of appeal is likewise given, which was taken away by the former act: the time of prosecution is also limited to three calendar months. This last statute is set out at full length in vol. v. of this work, p. 372—375.; and therefore reference only is made to it in this place: but as it is in some respects more rigorous than any former act, it is fit that magistrates should very particularly advert to its provisions. The editor thinks it necessary however in this place to observe, that by *Rule 1.*, of *Sched. L.* in 52 G. 3. c. 93, those who *intend to assist* in the taking or killing any game, woodcock, snipe, quail, landrail, or coney, shall *before they shall so assist in the taking or killing the same*, take out a certificate equally with those intending to take or kill.

V. Concerning gamekeepers.

“ All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands

Who may appoint a gamekeeper.

“ and seals (A) authorize one or more gamekeeper or game-keepers within their respective manors or royalties. 22 & 23 G. 2. c. 25. s. 2.” (See this *s.* more full, *ante*.)

Not under the degree of an esquire] In the case of *Jones v. Smart* (a), *Willis J.* said, That the lord of a manor is certainly not an esquire by virtue of his manor or royalty, though in common acceptation he is considered as such; and that no lord of a manor under that rank can appoint a gamekeeper, whatever his estate may be. 1 T. R. 44.

And in *Calcraft v. Gibbs*, M. 33. G. 3. L. Kenyon Ch. J. said, That the lord of a manor cannot convey to another the power of appointing a gamekeeper, without a conveyance also of the manor, itself. Such a power is a mere emanation of the manor, and it is inseparable from it. It is a mere shadow, accompanying the substance. 5 T. R. 19.

With power to kill game.

“ And may empower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game:”

“ But if the gamekeeper shall, under colour of the said authority, kill or take the same for the use of the lord, [and] (b) afterwards sell and dispose thereof without the lord’s consent or knowledge, and be convicted, on complaint of such lord, and on oath of one witness, before one justice, he shall be committed to the house of correction for three months, there to be kept to hard labour. 5 An. c. 14. s. 4.”

One gamekeeper in one manor; and to be entered with the clerk of the peace.

“ But no lord of a manor shall make or appoint above one person to be a gamekeeper within any one manor, with power to kill the game thereof. And the name of such person shall be entered with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling.”

“ And if any other gamekeeper, whose name shall not be so entered, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath-game or grouse, he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5l. half to the informer and half to the poor; to be levied by distress and sale: for want of distress, to be sent to the house of correction for three months, for the first offence, and for every other offence four months, 9 An. c. 25. s. 1.” Pro-

(a) See this case more at large, *ante* under head III. *Qualification by estate or degree, &c.*

(b) The word *and*, seems redundant here. K.

execution to be within three months after the offence committed. (See 5 Ann. c. 14. §. 2. ante.)

Who shall not be otherwise qualified.] From these words it seemeth clear that a gamekeeper who is qualified in his own right to kill game, need not be entered with the clerk of the peace.

But by 25 G. 3. c. 50. "Every deputation of a gamekeeper shall be registered with the clerk of the peace of the county or place where the manor shall lie, and such gamekeeper shall take out a certificate thereof (B) annually, upon which there shall be charged a stamp duty of 10s. 6d. §. 2." [By 31 G. 3. c. 21. §. 1. 10s. 6d. more. Total 11. 1s.] See however 48 G. 3. c. 55. *sched. L. rules 7, 8, 9.*: title *Certs. (affessed.)* (vol. v.)

Take out a certificate on stamp.

"If any gamekeeper, to whom such deputation shall be granted, shall, for twenty days next after the granting thereof, neglect or refuse to register the same, and take out a certificate thereon, as aforesaid, he shall forfeit 20l. §. 9."

"And in case of a new deputation of a gamekeeper, the same shall be registered with the clerk of the peace, and a certificate thereon obtained as aforesaid; whereupon the former certificate shall be void, and the person acting under the same after notice to him given of such new certificate shall be liable to the penalties prescribed by this act, in the same manner as if no certificate had been granted to him. §. 14."

"No certificate obtained under any such deputation shall authorize any such gamekeeper to take or destroy game out of the precincts or limits of the manor for which such deputation was given. §. 17."

Not to extend beyond the manor.

"Moreover, by the 3 G. c. 11. it is further enacted, that no lord of a manor shall make any person to be a gamekeeper with power to kill game, unless such person be qualified by the laws of this realm so to do; or unless such person be truly and properly a servant to the said lord; or be immediately employed and appointed to take and kill the game for the sole use of the said lord, and not otherwise." See, however, *post*, 48 G. 3. c. 93. §. 2, 3. in which this and the following paragraph are repealed.

To be also a servant of the lord, or immediately employed for him.

"And if any person, not being qualified by the laws so to do, or not being truly and properly a servant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the sole use or immediate benefit of the said lord, shall under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord of a manor, take and kill any hare, pheasant, partridge, or other game whatsoever, or shall

"keep

Gamekeeper's
power to search.

"keep or use any greyhounds, setting dogs, hays, lurchers, guns, tunnels, or any other engine to kill and destroy the game, he shall forfeit 5l. in like manner." *f. 1.*

"The gamekeeper (so authorized) may search for dogs and engines, and seize the same for the use of the lord, or destroy them." 22 & 23 C. 2. c. 25. *f. 2.*

But it hath been adjudged that an authority from the lord of the manor is not sufficient of itself for this purpose, but that he ought to have a warrant from a justice of the peace. *Comb. 183. Carpenter v. Adams.* At least it may be safe to have such warrant, especially if any houses are to be entered and searched.

For it would give too great a power to the gamekeepers to leave it in their discretion to search what places they should think proper, as also to constitute them the judges whether such or such a person were or were not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

Whether he may
carry a gun out
of the manor.

M. 9. G. 3. Rogers v. Carter. The plaintiff *Rogers* brought an action against the defendant, being a justice of the peace, for taking and carrying away the plaintiff's gun. After a verdict for the plaintiff, a new trial was moved for. The case was, the plaintiff, being a gamekeeper within the manor of *Ringwood*, in beating for game within the said manor sprung a covey of partridges, which he shot at within the said manor. They took a second flight, and he pursued them out of the manor, but could not find them. As he was returning to the manor of *Ringwood*, he was met by the defendant about three quarters of a mile distant from that manor, who asked him if he had a qualification. The plaintiff answered, I have a deputation from the lord of the manor of *Ringwood*. The defendant replied, you are now out of that manor; and demanded his gun, and took it from him. The defendant did not shoot out of the manor, but was three quarters of a mile out of the manor, with his gun and dog, with an intention to shoot at game. By the court: The question is, Whether the justice had a right to take the plaintiff's gun from him, whilst he was sporting for the purpose of killing game in another manor, out of the manor of *Ringwood*? And we are all of opinion, he had not such right. If he had killed game where he was not a gamekeeper, he might have been convicted in the penalty of 5l.; but he was entitled to keep and have dogs, guns, and nets any where, and a gamekeeper's gun cannot be seized either in going to or returning from the manor, or in any other place; and if gamekeepers were permitted to seize one another's guns, it would create a kind of border

war

war amongst them. And the rule to shew cause why there should not be a new trial was discharged. 2 *Wilson*, 387.

Spurrier v. Vale. H. 49 G. 3. — Debt for the penalty of 5l. on 3 G. 1. c. 11. & 5 & 9 An. for using a gun and dog for killing game: — It was proved on the part of the plaintiff, that the defendant shot a pheasant in B. manor: that he acted as gardener, and lived in a house belonging to Mrs. *Hipbush*. For the defendant a regular deputation was proved from *New College Oxford*, appointing the defendant their gamekeeper for B. manor, in their usual form; to kill game for their use. — In answer to this it was objected that the defendant was not according to the requisition of the statute “truly and properly a servant of the lord of the “manor.” — But this was over-ruled by the judge, (the lord C. Baron,) who held that these words were not to be construed to mean “domestic servant;” (at least in the case of corporate bodies.) — Then it was contended that in order to protect the defendant, it was necessary he should take and kill game for the sole use and immediate benefit of the lord. But the judge thought, that, supposing it to be so, a gamekeeper regularly appointed, proved simply to have taken or killed game, was to be presumed to have so done, according to law, till the contrary were proved: — And a verdict was found for the defendant. — In moving to set this aside, on the ground of a misdirection in law, it was admitted that, excepting under this deputation, the defendant was not a qualified person, and then it was contended that he ought therefore to shew that he was killing game for the immediate use of the lord. And *Rogers v. Carter* (above) was cited in support of this argument. — But the court agreed that the defendant having been deputed gamekeeper of the lord of the manor, it might be presumed that the game was killed for the use of the lord, if nothing appeared to the contrary; and the rule was discharged. 10 *E. R.* 413.

By the 48 G. 3. c. 93. s. 1., the 2 J. 1. c. 27. s. 2., and the 3 G. 1. c. 11. are repealed.

By 48 G. 3. c. 93. s. 2. It is enacted, that it shall be lawful for any lord or lady of any manor to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, with authority to such person as gamekeeper to kill game within the same for his own use, or for the use of any other person or persons whatever to be specified in such appointment or deputation, whether qualified or not; and no person so appointed gamekeeper as aforesaid and empowered

Lords of manors may appoint gamekeepers, whether qualified or not, &c.

to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid; any thing in any act or acts of parliament to the contrary notwithstanding.

Gamekeepers so appointed to have the same rights as if qualified.

And by s. 3. Any person appointed gamekeeper under the authority of this act to kill game for his own use or the use of any other person, shall have the same rights, privileges, power, and authority as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws in force immediately before the passing of this act.

For the mode in which gamekeepers, certificates, and deputations are to be regulated, see 48 G. 3. c. 55. Sched. L. rules 7, 8, and 9. tit. *Taxes* (Assessed), vol. v.

VI. *Laws for preserving the four-footed game in particular.*

Which said laws seem to concern all persons whomsoever, whether qualified or not.

Now the four-footed game, or the game of beasts, are of three kinds, viz.

1. *Deer.*

(a.) *Deer stealing.*

[3 Ed. 1. c. 20. — 21 Ed. 1. ft. 2. — 1 H. 7. c. 7. — 16 G. 3. c. 30. — 42 G. 3. c. 107.]

(b.) *Destroying covert for deer.*

[28 G. 3. c. 19.]

2. *Hares.*

[14 & 15 H. 8. c. 10. — 1 J. c. 27. f. 2. 4. — 22 & 23 C. 2. c. 25. f. 6. — 9 An. c. 25. f. 3. — 13 G. 3. c. 80. f. 1, 2, 3. — 39 & 40 G. 3. c. 50. — 48 G. 3. c. 93. f. 1.]

3. *Conies.*

[1 H. c. 7. — 21 Ed. 1. ft. 2. — 3 J. c. 13. f. 5. — 22 & 23 C. 2. c. 25. f. 4, 5, 6. 9. — 5 G. 3. c. 14. f. 6 — 9. — 48 G. 3. c. 55.]

VI. 1. (a.) *Deer-stealing.*

By the 3 *Ed. 1. c. 20.* If *trespassers in parks* be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years' imprisonment, and after shall make fine at the king's pleasure (if they have whereof), and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years' imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit.

Trespasses] This is, when a man either chaseth in a park, or endeavours to kill some of the game thereof. 2 *Inst.* 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereupon three things are required; 1. A liberty, either by grant or prescription; 2. Inclosure, by pale, wall, or hedge: And, 3. Beasts savages of the park. *Id.*

By the 21 *Ed. 1. st. 2.* intitled *De malefactoribus in parcis.* If any forester or parker shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms, although such forester, parker, or their assistants do kill such offenders, they shall not be troubled upon the same.

By the 1 *H. 7. c. 7.* Unlawful hunting in a forest of park is under certain circumstances made felony. Upon the construction of that statute, Lord Coke, 3 *Inst.* 21. reports a very singular opinion of the judges, *M. 19 & 20 Eliz.*; which opinion is controverted by Lord Hale, 1 *H. H.* 659.

But this stat. 1 *Hen. 7.* was superseded by the Black Act, 9 *G. 2. c. 22.*, which was virtually repealed, as far as respects stealing or hunting deer, by the stat. 16 *G. 3. c. 30.* and this latter has been in part repealed, and in part amended by the stat. 42 *G. 3. c. 107.* These two latter statutes therefore now contain the law on this head.

Previous to the 42 *G. 3. c. 107.* the judges were unanimously of opinion that the 16 *G. 3. c. 30.* amounted to a repeal of the felony (by the Black Act) of singly killing deer in a park inclosed. *Leach.* 228. But it may be observed, that though the stat. 16 *G. 3. c. 30.* expressly repeals nine different statutes by name, it does not in terms repeal that part of the Black Act which relates to this point (Mr. Durnford's note.)

By the 42 G. 3. c. 107. s. 6. So much of the 16 G. 3. c. 30. as imposes any penalty, forfeiture, or punishment, on persons who shall hunt, course, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or carry away any fallow deer, [note the omission of the word *red*, which is in 16 G. 3. c. 30.] in any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or other inclosed ground where deer were or had been, or should be usually kept, without the consent of the owner, or being otherwise duly authorized, or who shall be aiding, &c. therein, shall be by this act with respect to the said offences repealed. And by 42 G. 3. c. 107. s. 1. If any person shall wilfully course or hunt, or take in any slip, noose, toyle, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any *red* or fallow deer, kept or being in the inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground, where deer are, have been, or shall be usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized; or shall knowingly be aiding, abetting, or assisting therein or thereunto; every person so wilfully offending shall be deemed to be guilty of felony, and on conviction thereof adjudged to be transported for seven years.

Courfing, taking, killing, or shooting at deer in inclosed ground, felony.

Courfing, &c. in uninclosed ground, penalty of 50l.

Keepers offending to forfeit double.

On conviction of offenders under the recited act, any magistrate may mitigate the penalty of 50l. to 20l.

And every person who shall commit any of the said offences in the uninclosed part of any such forest, &c. or shall be abetting therein as aforesaid, shall for every such offence forfeit 50l. s. 2.

If the offender shall be a keeper of or intrusted with the custody or care of deer, in the forest, &c. where the offence shall be committed, he shall forfeit double. *Id.*

By 51 G. 3. c. 120. reciting that by 42 G. 3. c. 107. No provision is made for a mitigation of the pecuniary penalties thereby imposed for committing the several offences therein mentioned; it is enacted, that, on the conviction of any offender under the said act, for wilfully courfing or hunting, or taking in any slip, noose, toil, or snare, or killing, wounding, or destroying or shooting, or otherwise attempting to kill, wound, or destroy, or carrying away any red or fallow deer, kept or being in the unenclosed part of any forest, chase, purlieu, or ancient (a) *walk*, without the consent of the owner of such deer, or without being otherwise duly authorized, or for knowingly being aiding, abetting, or assisting therein or thereunto; it shall be lawful for the magistrate

(a) In the 42 G. 3. c. 107. s. 1. this is *walk*.

by and before whom such offender shall be convicted to mitigate the penalty of 50*l.* thereby imposed for the first offence, to any sum at his discretion not less than 20*l.*, to be levied in the manner directed by the said recited act: Provided always, that every other provision in the said recited act shall remain as if this act had not been passed.

By the 42 G. 3. c. 107. s. 3. The powers, provisions, rules, methods, forms, restrictions, and all other matters and things enacted in the 16 G. 3. c. 30. concerning the seizing, apprehending, and conviction, for offences against the said act, and concerning the recovery, application, and disposal of the penalties and forfeitures therein mentioned, and of appealing from convictions, and bringing actions, and the costs given by the said act are to be applied to this act (42 G. 3. c. 107.) where applicable.

By 16 G. 3. c. 30. s. 4. It shall be lawful for one justice, Warrant to search. on complaint to him made on oath by any credible person that there is reason to suspect any person of having in his custody or possession, or in any dwelling-house, out-house, yard, garden, or place, any red or fallow deer which shall have been unlawfully killed, or the head, skin, or other part thereof, or any slip, noose, toyle, snare, or other engine, suspected to be used for the unlawful taking of deer, — by his warrant (S) to cause such person, and such dwelling-house, out-house, garden, or place to be searched; and if any such shall be found, to cause the same, and such person so having possession or in whose dwelling-house, out-house, garden, or other place, the same shall be found, to be brought before any justice having jurisdiction; and if such person shall not produce before such justice the party of whom he received the same, or satisfy such justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such slip, noose, toyle, snare, or other engine, or did not keep the same for any unlawful purpose; he shall forfeit not exceeding 30*l.*, nor less than 10*l.*, at the discretion of such justice. 16 G. 3. c. 30. s. 4.

Red or fallow deer] Though this statute 16 G. 3. c. 30. only mentions red or fallow deer, it was holden in *March* 1801, that the cross breeds, such as what is called a *bastard menald*, bred from a *menald* buck and a fallow doe, are within the act. 2 *East's P. C.* c. 16. s. 42. — The same words "red or fallow deer" are used in the next statute, 42 G. 3. c. 107. passed the year after the above decision; and therefore it may be presumed that a similar construction will also be put on this act.

And if any red or fallow deer suspected to have been unlawfully killed, or the head, skin, or other part of such deer,

shall, on search under a warrant from a justice, be found in the possession or custody of any person, or in any dwelling-house, out-house, garden, or other place, or shall be proved to have been in the possession, house, out-house, garden, or place, of any person who may be justly suspected to have come dishonestly or unlawfully by the same as aforesaid; and such person so in possession, or the owner or occupier of such dwelling-house, out-house, garden, or other place, shall not under the provisions aforesaid be liable to conviction; in such case, for the discovery of the party who actually killed or stole such deer, it shall be lawful for any justice having jurisdiction, as the evidence given and the circumstance of the case shall require, to summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed; and if the person from whom such deer, or the head, skin, or other part thereof shall appear to have been first received, or who having had possession thereof shall not give proof to the satisfaction of such justice, that he came lawfully by the same, such person shall on every conviction forfeit not exceeding 30*l.*, nor less than 10*l.* 16 G. c. 30. *f.* 5.

If it shall appear on the oath of one witness, that any person hath, or have had, in his possession, house, out-house, garden, or place, any red or fallow deer, or the skin, head, or other part thereof, and shall be reasonably suspected to have come dishonestly or unlawfully thereby; every such person, and all others through whose hands the same shall appear to have passed under the like suspicion, may be proceeded against in like manner and form; and on conviction shall be subject and liable to the same penalty, as if such deer, or the head, skin, or other part thereof had been found in the possession, house, out-house, garden, or place of such person, on search made by warrant as aforesaid. *f.* 6.

If any person shall set, lay, or use any net, wire, slip, noose, toyle, or other engine, for the purpose of taking or killing deer, within or upon any forest, chase, purlieu, or ancient walk, or in the ring or outer fence or bank dividing the same from the adjoining lands; or in any inclosed park, paddock, wood, or ground, where deer are, have been, or shall be usually kept, (such person not being the owner of such forest, chase, purlieu, ancient walk, park, paddock, wood, or ground, or intrusted with the care of the deer within the same,) and shall be convicted of any such offences; he shall forfeit for the first offence not exceeding 10*l.* nor less than 5*l.*, and on every conviction after the first any sum not exceeding 20*l.* nor less than 10*l.* *f.* 7.

Pulling down
pales or other
fences.

If any person shall wilfully pull down or destroy, or cause to be wilfully pulled down or destroyed, the pale or pales or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner or person chiefly intrusted with the custody thereof, or being otherwise duly authorized; he shall be subject to the forfeiture and penalty hereby inflicted for the first offence of killing any deer. *f. 8.*

Seizing of dogs
guns, or other
engines.

If any person, carrying any gun or other fire arms, or any sword, staff, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, wood; or into any other ground where deer are usually kept, be the same inclosed or not inclosed, with an intent unlawfully to shoot at, course, or hunt, or to take in any slip, noose, toyle, snare, or other engine, or to kill, wound, destroy, or take away any red or fallow deer; it shall be lawful for the ranger or keeper, or person intrusted with the care of such deer, to seize and take from such person in and upon such forest, &c. &c. for the use of the owner thereof respectively, all such guns, fire arms, slips, nooses, toyles, snares, or other engines, and all dogs there brought for coursing deer, in like manner as the gamekeepers of manors are impowered by law within their respective manors, to seize and take dogs, nets, or other engines, in the custody of persons not qualified by law to keep the same. And if any such person shall there unlawfully beat or wound any ranger or keeper or his servants or assistants in the execution of his or their office, or shall attempt to rescue any person in the lawful custody of any such ranger, keeper, servant, or assistant, he shall be adjudged guilty of felony, and being convicted on indictment shall be transported to one of his majesty's plantations in *America* for seven years. *f. 9.*

Apprehending
offenders.

On complaint or information on oath of one witness before one justice of any offence against this act; such justice (except in such cases only where the justice is specially directed previously to summon the party before him) may by his warrant cause the party charged by such complaint to be apprehended by warrant, and brought before him at such time and place as shall be specified in such warrant; and thereupon such justice shall proceed to hear and determine the matter of such complaint.—And in case where it is provided by this act that the party complained of shall be summoned to appear, if the party so summoned shall not appear, then on proof of the service of such summons, either personally, or by leaving the same at his dwelling-house, lodgings, or other usual place of abode, it shall be

lawful for the justice to apprehend him by warrant and to proceed as if no previous summons had been directed by this act. *f. 10.*

And it shall be lawful for any keeper or under-keeper of any forest, &c. &c. where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend upon the spot any person whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away any red or fallow deer, from any forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do; or in setting or laying any net, wire, slip, noose, toyle, snare, or other engine therein, for the taking, killing, or destroying of deer therein; and to carry such offender before some neighbouring justice, to be dealt with according to law. *f. 15.*

Levying of penalties.

The pecuniary penalties of this act may be recovered before one justice for the county or other division, on the oath of one witness or on confession; half to the king, to be paid for his use into the hands of such person as the justice shall direct, and half to the informer. And in case of non-payment thereof with the charges incident to the conviction, immediately upon the conviction, the same and charges incident to the conviction shall be levied by warrant of such justice by distress and sale; and for want of sufficient distress (X) the offender, except in such cases where it is otherwise provided by this act, shall be committed to the common gaol for one whole year, unless the said penalty and charges shall be sooner paid. *f. 11.* (but see 42 G. 3. c. 107. *f. 2. infra*, p. 571. and *ante*, p. 564.)

And if upon conviction he doth not immediately pay the penalty, the justice may order him into custody during such time, not exceeding three days, as such justice shall think proper to allow for return of the warrant of distress. 16 G. 3. c. 30. *f. 12.*

Provided, that if it shall appear to the satisfaction of such justice, either by confession of the party or otherwise, that he hath not goods or chattels sufficient whereon to levy the penalty, the justice may, without issuing any warrant of distress, commit the party convicted, as if a warrant of distress had been issued, and a *Nulla Bona* returned thereon. *f. 13.*

Provided also, that if any person committed for any first offence against this act, shall before his commitment to prison, procure security to be given by two sufficient sureties, to the satisfaction of such justice, for payment of the penalty with the charges incident, within six days, inclusive of the day of conviction; the justice may accept of such security, and on non-payment thereof at the time stipulated,

may cause the party and his said sureties to be apprehended by warrant, and commit them to the common gaol for such time as the party convicted was liable to have been imprisoned if no such security had been given, unless the penalty or * charges shall be sooner paid. *f. 14.*

Finally; if an offender for his first offence against this act be committed for want of sufficient distress, and shall whilst in gaol obtain the consent in writing of the prosecutor, and also of the owner, ranger, forester, keeper, or other person chiefly intrusted with the care of the deer in the forest, &c. or other place, for his enlargement, the justices in sessions may cause him to be brought before them, and by their order may direct the gaoler to set him at liberty. *f. 16.*

If any offender shall make discovery of any other offender, so as he be convicted, he shall be discharged of all the forfeitures and penalties of this act by him incurred previous to such discovery. *f. 17.*

Offender informing.

The conviction shall be fairly written on parchment or paper, in the following form of words, or any other form to the like effect:

Conviction.

BE it remembered, that on the ——— day of ——— in the year ——— A. O. was, upon the complaint of A. I. convicted before ——— of the justices of the peace, for ——— in pursuance of an act passed in the sixteenth year of the reign of his majesty king George the third, for ——— (as the case shall be). Given under my hand and seal the day and year above written. f. 18.

And the same shall be certified to the next sessions, to be there filed amongst the records. *Id.*

No *certiorari* shall be allowed to remove any conviction or other proceedings on this act, unless the party convicted shall before the allowance of such *certiorari* become bound to the prosecutor in 100*l.* with sufficient sureties as the justice before whom the offender was convicted [*shall approve of*], with condition to pay to the prosecutor within thirty days after such conviction confirmed, on ‡ a procedendo granted, his full costs and damages to be ascertained upon his oath; —and shall also become bound to the justice before whom the conviction was made, with such sufficient

Certiorari.

* The word *or* seems here to be by mistake inserted, instead of the word *and*. For as the clause now stands, it seemeth that the parties may be dismissed on payment of the charges only.

† These words, or some such like, are necessary to complete the sense; having been omitted probably out of the statute by mistake.

‡ So the statute: The word *on* should be *or*.

sureties as the justice shall approve of, in the penalty of 60*l.* for each offence with condition to prosecute such writ of *certiorari* with effect, and to pay to the justice the forfeiture to be distributed as by this act is directed, or to render to the justice such person convicted within 30 days next after the conviction shall be confirmed, or a *procedendo* granted: And in default thereof, it shall be lawful to proceed to levy the penalty, as if no *certiorari* had been awarded. *f.* 19.

And after confirmation of the conviction by any of the superior courts at *Westminster*, and delivering to the justice the rule whereby the conviction hath been confirmed, he may proceed against the party in the same manner as if a *procedendo* had been granted. *f.* 20.

But by a subsequent clause in the act it is enacted; that no conviction shall be removed or removeable by *certiorari* or any other writ or process whatsoever, into any of his majesty's courts of record at *Westminster*; any law or statute to the contrary notwithstanding. *f.* 23.

How far these seemingly contradictory clauses are reconcilable, or whether either or which of them is in force, may afford matter of attentive consideration. Indeed, there seems to be a fatality attending these game laws; several of the most considerable of them not having been digested with the care and precision requisite in penal cases.

Appeal.

If any person shall think himself aggrieved by the determination of the justice, and shall not have sought his remedy by removing the matter by *certiorari* as aforesaid, he may appeal to the general quarter sessions next after the expiration of twenty days from the time of the conviction; giving to the prosecutor six days' notice in writing of his intention of bringing and prosecuting such appeal and of the matter thereof, and entering into recognizance before a justice, with two sufficient sureties to be approved by the said justice on * [*conviction*] to appear and try such appeal at the session which shall be held next and immediately after the expiration of 10 days from the time of such conviction, and to abide by the order or determination of such court, and for payment of such costs and charges as shall be awarded at the said court, and such appeal shall be at such sessions finally heard and determined. And if the conviction shall be there affirmed, the appellant shall pay to the prosecutor his full costs, to be ascertained by order of the said court. *f.* 21.

In *R. v. Eaton* it was determined that to a *certiorari* to remove a conviction by a justice on the above act, a return

* This word, as it seemeth, should be *condition*.

that "the record is returned to the sessions, and that a copy is annexed to the writ," is sufficient. 2 T. R. 89. 285.

In that case the court said that it was improper to sue out the *certiorari*; the defendant having appealed to the sessions had thereby made his election according to the terms of the act. But the court did not give any opinion on the effect of the 23d section of the act, whether or not that took away the *certiorari* in all cases, notwithstanding the sections 19, 20, and 21. Nor indeed was that question at all made.

Provided, that if any person, thinking himself aggrieved as aforesaid, shall have paid the penalty, or shall be then imprisoned, he may appeal against such conviction on entering into recognizance by himself only without surety, conditioned as before mentioned; the penalty remaining in the hands of such justice, or such person continuing in prison in the mean time, and until the merits of the appeal shall be finally determined. 16 G. 3. c. 30. s. 22.

Provided also, that no conviction shall be set aside by the sessions for want of form, or for want of stating or through the mistaking of any facts, circumstances, or matter whatsoever, in case the facts alleged in the conviction, or on which the same shall be grounded, shall be proved to the satisfaction of the court; but the appeal shall be decided on the merits of the case only. s. 23.

Prosecutions on this act shall be commenced within twelve calendar months from the time of the offence committed, and not afterwards. s. 25.

In what time prosecutions to commence.

By the 42 G. 3. c. 107. s. 3. It is provided, that in case of any pecuniary penalty or forfeiture imposed by this act, with the charges incident to the conviction, immediately on conviction, and for want of sufficient distress, the offender shall be sent by the convicting justice to the common gaol of the city or place where the offence was committed, for six months, and unless the penalty and charges be sooner paid.

And if any person after having been duly convicted of any offence for which a pecuniary penalty is imposed either by 16 G. 3. or by this act, shall offend a second time by committing any offence against this act for which a pecuniary forfeiture is imposed, such second offence, whether it be the same offence as the first, or be any other of the said offences, shall be deemed a felony (*a felony*), and the person guilty thereof on conviction on indictment shall be transported for 7 years. s. 4.

A second offence felony.

And for the more ready conviction of persons for a second offence, the justice before whom he shall be convicted for

Conviction for a second offence to be sent to quar-

ter sessions and
be evidence.

for the first offence against this act, (for which a pecuniary penalty is imposed,) shall transmit the conviction under his hand and seal to the next sessions, to be there filed amongst the records; and such conviction so filed, or a true copy thereof certified by the clerk of the peace, or proved to be a true copy, shall be sufficient evidence to prove the conviction for such first offence. *f. 5.*

VI. 1. (b.) *Destroying covert for deer.*

By the 28 G. 2. c. 19. Whereas the burning and destroying of goss, furze, and fern in forests and chases, doth destroy the cover necessary for the preservation of the deer and game there, therefore if any person not having a right or legal license to do the same, shall set fire to burn or destroy (or be aiding therein) any goss, furze, or fern, growing or being in any forest or chase, without the consent of the owner or person chiefly intrusted with the care and custody of such forest or chase, or of some part thereof, and being brought before a justice shall be thereof convicted by confession, or oath of one witness, or on view of the justice, he shall forfeit not exceeding 5l. nor less than 40s., half to the informer, and half to the poor of the parish; if not forthwith paid, to be levied by distress and sale; and if no sufficient distress can be found, the justice shall commit him to the common gaol for any time not exceeding three months, nor less than one month.

VI. (2.) *Of hares.*

It is to be remembered that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

Tracing in the
snow.

No person, of what estate, degree, or condition he be, shall trace, destroy, or kill any hare in the snow with any dog, bitch, bow, or otherwise. And the sessions or leet may inquire thereof; and after inquisition found, they shall for every hare so killed, cess upon every offender 6s. 8d. to be forfeited to the king, if in the sessions, and to the lord of the leet, if in the leet. 14 & 15 H. 8. c. 10.

And by the 1 J. c. 27. Every person who shall trace or course any hares in the snow shall on conviction before two justices, by confession, or oath of two witnesses, be committed to the common gaol, where the parties shall be apprehended

reprehended or offence committed, for three months, unless he pay to the churchwardens for the use of the poor 20s. for every hare which he shall take, kill, or willingly destroy; or after one month after his commitment become bound by recognizance with two sureties in 20l. a-piece before two justices, that he shall not kill, take, or destroy any of the said games by any of the said means. *f. 2.*

By the said last-mentioned act, every person who shall at any time take or destroy any hares with harepipes, cords, or any such instruments or other engines, shall forfeit for every are 20s. in like manner. *1 f. c. 27. f. 2.*

Snares and hare-pipes.

[By 48 G. 3. c. 93. *f. 1.* reciting that whereas by 2 f. 1. c. 27. it was, amongst other things, enacted, that every person which should shoot at, kill, or destroy, with any gun, cross bow, stone bow, or long bow, any hare, should be subject to the penalties therein mentioned: And whereas it is expedient that the 3 G. 1. c. 11. should be repealed; and other provisions be made relating to the appointment of gamekeepers, it is enacted, that the said provision of the said act of *James* the first, and the said act of 3 G. 1. c. 11. shall be repealed.]

Provision of 2 Jac. 1. c. 27. respecting penalties for destroying hares, and recited act 3 G. 1. c. 11. repealed.

By the 22 & 23 C. 2. c. 25. *f. 6.* If any person shall be found or apprehended setting or using any snares, harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice in one month after the offence, he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall over and above pay down presently to the overseers for the use of the poor such sum not exceeding 10s. as the justice shall appoint; which, if he shall not do, the justice shall commit him to the house of correction for any time not exceeding one month.

By the 9 An. c. 25. *f. 3.* If any person whatsoever shall take, kill, or destroy any hare in the night time, he shall on conviction before one justice, on view or on oath of one witness, forfeit 5l., half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. *f. 3.*

Killing hares in the night, or on Sunday, or Christmas-day.

And by the 13 G. 3. c. 80. If any person shall knowingly and wilfully kill, take, or destroy any hare, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any hare in the night, that is to say, between the hours of seven at night and six in the morning from the 1st day of Oct. to the 12th day of Feb., and between nine at night and four in the morning from the 12th day of Feb. to the 12th day of Oct. [or in the day time upon a Sunday or Christmas day]; he shall on conviction on oath of one witness

Conviction.

witness before one justice forfeit for the first offence not exceeding 20l. nor less than 10l., and for the second offence not exceeding 30l. nor less than 20l. And the justice shall cause the conviction to be made out in the manner and form following: *Be it remembered, that on the ——— day of ——— in the year of our Lord ——— A. B. is convicted before me ——— one of his majesty's justices of the peace of the county of ———* (specifying the offence, with the time and place where the same was committed, and also specifying that it was the first or second offence against this act as the case shall be). *Given under my hand and seal the day and year aforesaid.* Which conviction the said justice shall cause to be fairly written on parchment, and returned to the next sessions to be filed by the clerk of the peace; who shall upon application to him made deliver copies thereof on payment of 1s. for each copy. *s. 1, 2, 3.*

If a second offence.

But in case any information shall be made upon oath as aforesaid before a justice against an offender, and it shall appear that such offender hath already been convicted of a first and second offence against this act, in such case the justice shall commit him to the common gaol or house of correction till the next general quarter sessions, unless he shall have entered into recognizance with two sufficient sureties to appear at such sessions then and there to be tried by indictment for the said offence; and such justice shall also bind over the informer to prosecute the said offender by indictment as aforesaid; and the justices at sessions shall direct the said indictment to be tried accordingly; and if upon such indictment the offender shall be convicted, he shall forfeit and pay in court the sum of 50l.; and if he shall neglect or refuse to pay the same, he shall be committed to the common gaol or house of correction for not less than six nor more than 12 calendar months, unless such penalty shall be sooner paid; and the said offender shall, if the justices think proper, be once publicly whipped for such offence at the expiration of such commitment, in the town or place where such gaol or house of correction shall be, between the hours of twelve and one in the day. *s. 1.*

Prosecutions to be within one month.

Provided that no proceeding shall be upon this act, unless information on oath be made before a justice within one calendar month after the offence committed. *s. 9.*

Application of the penalties.

The said forfeitures for the first and second offence, and also for the third offence on conviction at the sessions, together with the costs and charges previous to and attending such conviction (to be ascertained by the justice before whom the offender shall be convicted) shall be forthwith paid, by the person convicted, half to the informer and half to the poor. And if such person shall refuse or neglect to pay the

he same, or to give security for the payment thereof, such justice shall by warrant under his hand and seal cause the same to be levied by distress and sale, together with all costs and charges attending such distress and sale: And the said justice may order such offender to be detained in custody until return may conveniently be had to the warrant of distress, unless the party give sufficient security by recognizance or otherwise to the satisfaction of such justice for his appearance before the said justice on the day appointed for the return of the said warrant, not exceeding seven days from the taking such security: but if upon such return no sufficient distress can be had, the said justice shall commit the offender to the common gaol or house of correction for three calendar months, unless the forfeiture shall be sooner paid, or until such offender, thinking himself aggrieved by such conviction, shall give notice to the informer that he intends to appeal to the next sessions, and shall enter into a recognizance before a justice with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such sessions; which notice shall not be less than 14 days before the trial of the appeal. And the justices at such sessions, on proof of such notice and recognizance, shall hear and finally determine the appeal in a summary way, and award costs to either party as they shall judge proper: And their determination shall be final. *f. 4.*

And if the offender dwell in another county than that in which the offence was committed, the justice before whom the information or indictment was made may direct his warrant of apprehension and distress and sale to any constable where the offence was committed, to be by him carried to a justice residing near where the offender dwells, to be signed by him on the back of the said warrant, on proof on oath of the hand-writing of the justice who first granted the warrant; which indorsement shall be sufficient authority for the constable of the place where he dwells, or where his goods and chattels or, distress are, or for the constable who brings the warrant to be indorsed, to apprehend and convey the offender before the justice who first granted the warrant, or any other justice of that county where the offence was committed, or for such constable to levy the penalty by distress and sale; and also, in case where no sufficient distress can be had, to convey the offender before the justice who first granted the warrant of distress, or any other justice of that county where the offence was committed, to be dealt with according to law. And the justice who indorsed the warrant shall direct the constable or other person making the distress and sale to deliver over the money levied to the

the justice who first granted the warrant; and if such constable or other person shall neglect or refuse to pay such sum, or deliver over all proceedings upon such distress and sale or warrant of apprehension, the justice who first granted the warrant, or the justice who indorsed it, may commit him to the common gaol or house of correction for six months, or till the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant. *f. 7.*

And no order made, or any other proceedings upon this act shall be quashed for want of form, or removed by *certiorari* or other writ into any of the courts of record at *Westminster*. *f. 8.*

[Note; in respect to the third offence, here seems to be an inconsistency. The former part of the act says, if the offender shall not, upon conviction by indictment at the sessions, pay in the court the penalty of 50*l.*, he shall be committed to the gaol or house of correction for not less than six months nor more than 12. — The latter part of the act says, the said penalty shall be levied by distress; and if no distress can be had, the offender shall be committed to the gaol or house of correction for *three* months; with power of appealing to the sessions then next following.]

Order such offender to be detained] This order to detain the party in custody till the return of the warrant of distress may be given by *parol*: it is not necessary that it should be in writing. *Still v. Walls. 7 East's Rep. 533.*

Buying and selling hares.

Every person who shall sell or buy to sell again any hare, shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every hare 10*s.*, half to the poor, and half to him that will sue. 1 *J. c. 27. f. 4.*

Taking hares in warrens.

By the Black Act before mentioned, if any person armed and disguised shall appear in any warren or place where hares have been or shall be usually kept, or unlawfully rob any such warren, or (whether armed and disguised or not) shall forcibly rescue any person lawfully in custody for either of the said offences, or shall by gift or promise of money of other reward procure any to join with him in any such unlawful act; he shall be guilty of felony without benefit of clergy.

VI. (3.) Conies.

Trespassers in warrens may be resisted.

If any warrener shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do flee, or defend themselves, although the warrener or his assistant do kill such offenders, they shall not be troubled upon the same. 21 *Ed. 1. st. 2.*

When

When information shall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself, or any other of the said counsel or justices; and if such person shall conceal the said hunting or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions. 1 H. c. 7.

Hunting in a warren by night or disguised.

If any person shall in the night-time or by day, wrongfully or unlawfully break or enter into any park impaled or other several grounds inclosed with wall, pale, or hedge, and used for keeping of conies, and hunt, drive out, take, or kill any conies therein against the mind of the owner; he shall, on conviction at the suit of the king or of the party at the assizes or sessions, on indictment, bill, or information, or otherwise, be imprisoned three months, and pay to the party grieved treble damages and costs, to be assessed by the convicting justices after the said three months expired, and find sureties for his good abearing for seven years after, or continue in prison till he does during the said term of seven years: But this shall not extend to any grounds to be inclosed and used for conies after the making of this act, without the king's license. 3 J. c. 13.

Hunting by night in a warren inclosed.

If any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be inclosed or not, and there shall chase, take, or kill any conies against the will of the owner or occupier, and shall be thereof convicted in one month after the offence before one justice, by confession, or oath of one witness; he shall yield to the party grieved treble damages and costs, and be imprisoned three months, and after till he find sureties for his good abearing. 22 & 23 C. 2. c. 25. s. 4.

Killing in places inclosed or uninclosed by night or day.

If any person shall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there wilfully and wrongfully take or kill in the night time any cony against the will of the owner or occupier thereof, or shall be aiding and assisting therein, and shall be convicted thereof at the assizes, he shall be transported for seven years, or suffer such other lesser punishment, by whipping, fine, or imprisonment, as the court shall award. Provided that conies may be taken, in the day time, on the sea, or river banks in the county of *Lincoln*, so far as the tide shall extend, or within one furlong of the said banks; and the person taking them shall not be obliged to make satisfaction for damage,

If by night, further penalty of transportation.

unless the same shall exceed the sum of 1s. 5 G. 3. c. 14. f. 6, 7, 8, 9.

Felony without
benefit of clergy.

By the Black Act above mentioned, If any person being armed and disguised shall appear in any warren or place where conies are usually kept, or unlawfully rob any such warren, or (whether armed and disguised or not) shall rescue any person in custody for such offence, or procure any person to join him therein; he shall be guilty of felony without benefit of clergy.

Killing in the
night in the
borders of war-
rens.

No person shall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them;) on pain that the offender, on conviction in one month after the offence, before one justice, by confession or oath of one witness, shall give to the party injured such damages and in such time as shall be appointed by the justice, and over and above pay down presently to the overseers for the use of the poor such sum not exceeding 10s. as the justice shall appoint, which if he shall not do, the justice shall commit him to the house of correction for such time as he shall think fit, not exceeding one month. 22 & 23 C. 2. c. 25. f. 5.

The statute saith, *upon the borders of warrens*; but if they are out of the warren, no person hath any property in them; and a man may justify killing them if they eat up his corn; but no action lies against the owner of the warren. 5 Co. 104. Read. Game.

So a person that hath a right of common may kill them when they are out of the warren, and destroy the common; but he cannot have an action on the case against the lord, for that would be to create a multiplicity of actions. Cro. El. 548. Cro. Ja. 195. Cro. Car. 388.

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil. 2 Bac. Abr. 614.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common, and by the number of burrows made by the conies prevents the commoners' cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and

and remove the nuisance. As in the case of *Cooper v. Marshall*, E. 30 G. 2. By L. Mansfield Ch. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abateable, whether the commoner can do himself justice? It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abateable. The lord by his grant of common gives every thing incident to the enjoyment of it, as ingress, egress, and the like; and thereby authorizes the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground; because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoners' cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not to abate; not to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no farther. Yet the commoner cannot destroy or drive off the conies; nor consequently, can he destroy the burrows, which is in effect destroying the conies. *1 Burr. 252.*

If any person shall be found or apprehended setting or using any snares or other like engines for taking of conies, and shall be thereof in like manner convicted, he shall give to the party grieved such damages and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10s. as the justice shall appoint; which, if he shall not do, the justice shall commit him to the house of correction for any time not exceeding one month. 22 & 23 C. 2. c. 25. *f. 6.* Setting snares.

Persons aggrieved by any judgment given by virtue of this act may appeal to the next sessions, whose order therein shall be final, if no title to any land or royalty be therein concerned. *f. 9.* Appeal.

Keeping engines.

If any person not having manors, lands, tenements, or hereditaments of a clear 40l. a-year, or not worth in goods 200l., shall use any gun or bow to kill conies, or shall keep any ferrets or cony dogs, (except he have grounds inclosed within wall or hedge for keeping of conies, the increasing of which shall amount to a clear 40s. a-year to be let, and except keepers or warreners in their parks, warrens, or grounds); in such case, any person having a clear 100l. a-year in fee simple, fee tail, or for life, in his own right or the right of his wife, may seize the same to his own use.
3 J. c. 13. f. 5.

By the 48 G. 3. c. 55. The necessity for taking out a certificate to kill game, is now extended to killing conies.

VII. Laws concerning the winged game in particular.

[And herein that which is, strictly speaking, *Game*, is not the sole subject of consideration.]

1st. Of hawks and hawking.

[34 Ed. 3. c. 22. — 11 H. 7. c. 17. — 5 El. c. 21. f. 3. — 23 El. c. 10. f. 4.]

2d. Of swans.

[22 Ed. 4. c. 6. — 11 H. 7. c. 17. — 1 J. c. 27. f. 2.]

3d. Of partridges and pheasants.

[11 H. 7. c. 17. — 33 E. c. 10. f. 1. — 1 J. c. 27. f. 2. 4. — 7 J. c. 11. — 9 An. c. 25. f. 3. — 2 G. 3. c. 19. f. 1, 2. 4. — 13 G. 3. c. 80. f. 1. — 39 G. 3. c. 34. — 39 & 40 G. 3. c. 50.]

4th. Of pigeons.

[1 J. c. 27. f. 2. — 2 G. 3. c. 29.]

5th. Of wild ducks, wild geese, and other water fowl.

[25 H. 8. c. 11. — 1 J. c. 27. f. 2. — 9 An. c. 25. f. 4.]

6th. Of heath-fowl, grouse, and bustards.

[1 J. c. 27. f. 2. — 4 & 5 W. c. 23. f. 11. — 5 An. c. 14. — 9 An. c. 25. — 13 G. c. 80. — 13 G. 3. c. 55. f. 1, 2. 4. — 43 G. 3. c. 112. — 50 G. 3. c. 67.]

7th. Of herons.

[19 H. 7. c. 11. — 25 H. 8. c. 11. — 1 J. c. 27. f. 2.]

8th. Of other fowl.

[25 H. 8. c. 11.]

1st. *Of hawks and hawking.*

No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king shall have a reasonable reward of the king, or else the hawk for his labour. 11 *H. 7. c. 17.*

What hawks a man shall bear.

Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county that he hath such an hawk in his custody; and if he is challenged in four months, the owner shall have him again, paying the costs; if he is not challenged in four months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall re-deliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 *Ed. 3. c. 22.*

Person finding a hawk.

And if any man steal any hawk, and the same carry away, not doing the ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse or other thing, 37 *Ed. 3. c. 19.* That is, he shall be guilty of felony, but shall have his clergy. 3 *Inst. 98.*

Stealing a hawk.

If any person shall take away any hawk or hawks or their eggs by any means unlawfully out of the woods or ground of any person, and be thereof convicted at the assizes or sessions on indictment, bill, or information, at the suit of the king, or of the party, he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find sureties for his good abearing for seven years, or remain in prison till he doth find such during the said time of 7 years. 5 *El. c. 21. f. 3.*

Taking hawks or eggs out of the woods.

But by a more ancient statute, no man shall take any ayre, faulcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them; on pain of 10*l.*, half to him that will sue before the justices of the peace, and half to the king. 11 *H. 7. c. 17.*

And no manner of person of what condition or degree he be shall take or cause to be taken on his own ground or

any other man's the eggs of any falcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. 11 H. 7.

c. 17.

Hawking in
corn.

If any manner of person shall hawk in another man's corn, after it is eared, and whilst growing, and before it is shocked, and be convicted at the assizes, sessions, or leet, he shall forfeit 40s. to the owner; and if not paid in ten days, he shall be imprisoned for a month. 23 El. c. 10.

f. 4.

2d. Of swans.

Qualification to
keep swans.

No person (other than the king's son) unless he have lands of freehold to the value of five marks a-year, shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 Ed. 4. c. 6.

Stealing swans
marked.

It is felony to take any swans that be lawfully marked though they be at large. Dalt. c. 156.

Swans un-
marked.

And as to swans unmarked; if they be domestical or tame, that is kept in a moat, or in a pond near to a dwelling house, to steal such is also felony. Id.

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. Id.

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long felony cannot be committed by taking them. Id.

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use by his prerogative. Also the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. Id.

Swans eggs.

Every person who shall take the eggs of any swans out of the nests, or willingly break or spoil them in the nests, and shall be convicted thereof before two justices by confession, or oath of two witnesses, shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20s. for every egg; or after one month of his commitment become bound by his recognizance with two sureties in 20l. a-piece, before two justices never to offend again.

again in like manner; which recognizance shall be returned to the next sessions. 1 *Jac. c. 27. s. 2.*

But by a more ancient statute, no person shall take or cause to be taken on his own ground or any other man's the eggs of any swan; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swan. 11 *H. 7. c. 17.*

3d. *Of partridges and pheasants.*

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows.

By the 11 *H. 7. c. 17.* It is enacted, that no person of what condition he be, shall take or cause to be taken any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special license of the owner or possessor of the same; on pain of 10*l.*, half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Taking them in another man's ground.

Every person who shall shoot at, kill, or destroy any pheasant or partridge with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nests or spoil them in the nests, shall on conviction before two justices, by confession or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor 20*s.* for every pheasant, partridge, or egg; or after one month after his commitment become bound by recognizance with two sureties, before two justices in 20*l.* each, not to offend again in like manner. The recognizances to be returned to the next sessions. 1 *J. c. 27. s. 2.*

Taking them with nets, dogs, or engines; or their eggs.

And by the 7 *J. c. 11.* Every person who shall take, kill, or destroy any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines, shall on conviction before two justices, by confession, or oath of one witness, be committed to the common gaol where the offence shall be committed or the party apprehended, for three months, unless he forthwith pay to the churchwardens or overseers 20*s.* for every pheasant or partridge; and further shall become bound by recognizance of 20*l.* before one justice that he shall not thereafter take,

kill,

kill, or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

Selling or buying.

Every person who shall sell or buy to sell again any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea;) shall on conviction at the assizes, or sessions, or before two justices out of sessions, forfeit for every partridge 10s., and for every pheasant 20s.; half to him that will sue, and half to the poor. *f. c. 27. s. 4.*

Taking in the night.

By the 23 *El. c. 10.* If any person, of what estate, degree, or condition soever, shall take, kill, or destroy any pheasants or partridges in the night-time, and be thereof convicted at the assizes, sessions, or leet, he shall forfeit for every pheasant 20s., and for every partridge 10s., half to him that shall sue, and half to the lord of the liberty, lordship, or manor, unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days next after conviction, he shall be imprisoned for one month: and moreover, besides such forfeiture or imprisonment, he shall give bond to some justice of the peace, with good sureties, for the space of two years not to take, kill, or destroy any partridges or pheasants contrary to the true meaning of this act. *f. 1.*

By the 9 *An. c. 25. s. 3.* If any person whatsoever shall take, kill, or destroy any pheasant or partridge in the night-time, he shall on conviction before one justice, on oath of one witness, forfeit 5l., half to the informer, and half to the poor, by distress; for want of distress to be sent to the house of correction for three months for the first offence, and for every other offence four months. *f. 3.*

And by the 13 *G. 3. c. 80.* If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any pheasant or partridge in the night, that is, between the hours of seven at night and six in the morning from the 12th day of *Oct.* to the 12th day of *Feb.*, and between the hours of nine at night and four in the morning from the 12th day of *Feb.* to the 12th day of *Oct.*; or, in the day time, on a *Sunday* or *Christmas-day*; he shall forfeit for the first offence not exceeding 20l., nor less than 10l.; for the second offence not exceeding 30l., nor less than 20l.; for the third and every other subsequent offence, 50l. To be levied and recovered as the like penalties for killing any hare in the night or on a *Sunday* or *Christmas-day*, as is above set forth. *f. 1.*

Or on a Sunday or Christmas-day.

And moreover, by 39 & 40 G. 3. c. 50. Idle and disorderly persons, to the number of two or more, who shall destroy any pheasant or partridge in the night shall be deemed rogues and vagabonds. [See *ante* title *Hares*.]

Every person whatsoever, who shall hawk at, destroy, or kill any pheasant or partridge with any kind of hawk, or dog, by colour of hawking, between the first of *July* and the last of *August*, shall on conviction before two justices, by confession, or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor 40s. for every such hawking at any pheasant or partridge, and 20s. for every such pheasant or partridge, which he, his hawk, or dog shall take or kill. 7 *J. c.* 11. *f.* 2.

At what time hawking at them shall be prohibited.

Finally, by the 2 G. 3. c. 19. No person shall, upon any pretence whatsoever, take, kill, destroy, carry, sell, buy, or have in his possession or use any partridge between [1st of *February* and 1st *September*. 39 G. 3. c. 34.], or any pheasant between *February* 1. and *October* 1. yearly, on pain of forfeiting, on conviction by one witness, in any of the courts of record at *Westminster*, 5*l.* for every such partridge or pheasant with full costs. But this not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place. *f.* 1, 2, 4.

Within what times taking them in any kind shall be prohibited.

Prosecutions under this act, to be commenced within six months.

J. Rough being convicted on an indictment for stealing a pheasant, value 40s., of the goods and chattels of *H. S.* All the judges on a second conference in *Easter Term* 1779, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ naturæ* the indictment must shew that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add "of the goods and chattels of" such an one. 2 *Eass's P. C.* c. 16. *f.* 41.

Stealing pheasants.

[See *Jones's case*, vol. iii. tit. *Larceny*, Sect. I.]

4th. *Of pigeons.*

A lord of a manor may build a dove-cote upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's license. 3 *Salk.* 248. But any freeholder may build a dove-cote on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Who may erect a dove-cote.

And

Dove-cote not a nuisance.

And it hath been adjudged that erecting a dove-house is not a common nuisance, nor presentable in the leet. *Cro. Jac.* 490, 1.

Killing with dogs, nets, or engines.

By the 1 *J. c.* 27. *f.* 2. Every person who shall shoot at, kill, or destroy any house-dove or pigeon with any gun or bow, or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens, for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20s. for every pigeon, or after one month after his commitment become bound by recognizance with two sureties, before two justices in 20l. a-piece not to offend again in like manner. The recognizance to be returned to the next sessions.

And by the 2 *G. 3. c.* 29. If any person shall shoot at with an intent to kill or by any means kill or take, with a wilful intent to destroy, any house-dove or pigeon, and shall be thereof convicted, by confession or oath of one witness, before one justice where the offence was committed, or the party apprehended, he shall forfeit 20s. to the prosecutor; and if not forthwith paid, such justice may commit him to the common gaol of the county or house of correction, in the division or place where the party is convicted or apprehended there to remain to be kept to hard labour, not exceeding three calendar months nor less than one, unless the forfeiture shall be sooner paid. But this not to extend to the owners of dove-cotes, with regard to their own pigeons. And persons convicted on this act shall not be convicted on any former act: prosecutions on this act shall be commenced and carried on with effect within two calendar months after the offence committed; and persons imprisoned for default of payment of the penalty shall not be liable afterwards to pay such penalty.

Pigeons trespassing.

But if the pigeons come upon my land, and I kill them, the owner hath no remedy against me; though I may be liable to the statutes which make it penal to destroy them. *Cro. Jac.* 492.

Pigeons to go to the heir.

Doves in a dove-house, young and old, shall go to the heir, and not the executor. 1 *Inst.* 8.

5th. *Of wild ducks, wild geese, and other water fowl.*

Every person who shall shoot at, kill, or destroy with any gun or bow any mallard, duck, teal, or widgeon, and the same be provided by confession or oath of two witnesses, before two justices, shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor 20s. for each fowl, or after one month after the commitment become bound by recognizance with two sureties, before two justices in 20l. each, not to offend again in like manner; which recognizance shall be returned to the next sessions. 1 J. c. 27. f. 2.

Shooting water fowl.

No person between the last day of *May* and the last day of *August* yearly, shall take or cause to be taken any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4d., half to the king, and half to him that will sue by action of debt: Also the justices of the peace may inquire of, hear, and determine the same, as in cases of trespass. 25 H. 8. c. 11.

Not to be taken in the moulting season.

Nevertheless any gentleman, or any other that may dispend 40s. a-year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *Id.*

But by a subsequent statute, if any person whatsoever between *June* 1. and *Oct.* 1. yearly, 10 G. 2. c. 32.) shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place or resort for wild fowl in the moulting season, and shall be convicted thereof before one justice by the oath of one witness, he shall for every such fowl so taken forfeit 5s., half to the informer, and half to the poor, by distress and sale, rendering the overplus above the penalty and charge of distress: for want of distress, to be committed to the house of correction not exceeding one month nor less than 14 days, to be whipped and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice.

An. c. 25. f. 4.

No person from *March* 31. to *June* 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or the justices of the peace may determine the same as in cases of trespass. 25 H. 8. c. 11. f. 5.

Destroying their eggs.

6th. *Of heath fowl, grouse, and bustards.*

Shooting.

Every person who shall shoot at, kill, or destroy with any gun or bow any grouse, heath-cock, or moor-game, shall on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the church-wardens for the use of the poor where the offence was committed or the offender apprehended 20s. for each fowl, or after one month after his commitment become bound by recognizance, with two sureties in 20l. each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

Within what
times only to be
killed.

No person shall, upon any pretence whatsoever, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use any heath-fowl commonly called *Black game*, between *Dec.* 10. and *Aug.* 20.; nor any grouse, commonly called *Red game*, between *Dec.* 10 and *Aug.* 12; nor any bustard between *Mar.* 1. and *Sept.* 1. in any year; on pain of forfeiting for the first offence any sum not exceeding 20l. nor less than 10l.; and for the second and every subsequent offence not exceeding 30l. nor less than 20l.; half to the informer and half to the poor. 13 *G. 3. c.* 55. *f.* 1, 2. 4.

Penalties how to
be recovered.

To be recovered in any of his majesty's courts of record at *Westminster*, on prosecution within six calendar months after the offence committed. Or the same may be recovered before one justice, information on oath being made before him within three calendar months after the offence committed; which said justice may convict the offender by confession or oath of one witness; and on neglect or refusal to pay shall levy the same by distress and sale, together with all costs and charges attending the same, rendering the overplus. And such justice may order the offender to be detained in safe custody until return may conveniently be had to the warrant of distress, unless the said offender shall give security, by recognizance or otherwise, to the satisfaction of such justice for his appearance before him on the day appointed for the return of the warrant of distress, such day not exceeding five days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding six nor less than three calendar months, unless the forfeiture and all costs and charges attending the prosecution be sooner paid and discharged. *f.* 3, 4. 9.

And

And the conviction shall be drawn up in this or the like form; *Be it remembered, that on the ——— day of ——— in the year of our Lord ——— A. B. having appeared before me ——— one of his majesty's justices of the peace for the county of ——— and due proof having been made upon oath by one or more credible witnesses or witnesses, or by confession of the party (as the case may be) is convicted of* (specifying the offence with the time and place where the same was committed, and also specifying, if known, that it is the first, second, or any subsequent offence against this act, as the case shall be). *Given under my hand and seal the day and year aforesaid.* Which conviction the justice shall cause to be written on parchment, and returned to the next sessions, there to be filed and kept amongst the records. And the clerk of the peace shall grant copies thereof, on payment of 1s. for each copy. *s. 6, 7.*

Conviction.

If any person shall think himself aggrieved, he may appeal to any general quarter sessions to be holden within four calendar months after the cause of complaint shall arise, giving fourteen day's notice in writing to the justice and to every other person against whom complaint shall be made; and in four days after such notice, entering into recognizance before a justice with one sufficient surety, conditioned to try the appeal at and abide the order of and pay such costs as shall be awarded by the justices at such sessions. And the justice having received notice of appeal shall return all proceedings had before him, touching the matter of the said appeal, to the justices at such sessions. And the said justices upon proof of the notice given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party, to be paid and recovered as hereinbefore mentioned for the recovery of penalties and forfeitures under this act. And if any of the proceedings shall be quashed for want of form, or removed by *certiorari* or other process into any of the courts at *Westminster*. *s. 10.*

Appeal.

By the 9 *An. c. 25.* If any person whatsoever shall take and kill any moor, heath-game, or grouse in the night-time, or shall, on conviction before one justice, on the oath of one witness, forfeit 5l., half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

Killing in the night, or on a Sunday or Christmas-day.

And by the 13 *G. 3. c. 80.* If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any moor-game or heath-game, in the night, *viz.* between the hours of seven at night and six in the morning from the 12th day of *Oct.* to the 12th day of *Feb.*, and between

tween the hours of nine at night and four in the morning from the 12th day of *Feb.* to the 12th day of *Oct.*; or, in the day-time on a *Sunday* or *Christmas-day*; he shall forfeit for the first offence not exceeding 20*l.* nor less than 10*l.*; for the second offence not exceeding 30*l.* nor less than 20*l.*; for the third and every other subsequent offence, 50*l.* To be levied and recovered as the like penalties for killing any hare in the night, or on a *Sunday* or *Christmas-day*, as is above set forth under head *Hares*. And by 39 & 40 G. 3. c. 50 idle and disorderly persons amounting to two or more, who shall destroy or attempt to destroy any *black game*, or *game*, (grouse,) or any other game, in the night, shall be deemed rogues and vagabonds. [See head *Hares*.]

Heath fowl in
Somerset and
Devon.

By the 50 G. 3. c. 67. It is enacted, that no person shall on any pretence whatever take, kill, or destroy, or attempt to take, kill, or destroy, in the counties of *Somerset* and *Devon*, any heath fowl, commonly called *Black Game*, between the 10th of *December* and the 1st of *September*, in any year, and every person shall for every heath fowl so taken, killed, or destroyed, and for every attempt to kill, take, and destroy such heath fowl contrary to the true intent of this act, be liable to the same forfeitures and penalties to be recovered in the same manner and subject to the like appeal and the same provisions in every respect whatever as by the 13 G. 3. c. 55. are enacted in respect of any offence committed against the said acts.

Black game in
the New Forest.

And persons taking or killing in the *New Forest* any *Black Game*, between *Dec. 10.* and *Sept. 1.* shall be liable to the same forfeitures and penalties of the 13 G. 3. c. 55. 43 G. 3. c. 112.

Burning ling.

For the better preserving the red and black game of grouse commonly called heath-cocks, or heath-polts, no person whatsoever on any mountains, hills, heaths, moors, forests, chafes, or other wastes, shall presume to burn, between *Feb. 2.* and *June 24.*, any grig, ling, heath, furze, goss, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, and not less than ten days there to be whipped and kept to hard labour. 104 & 5 W. c. 23. s. 11.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognizance thereof; but the trial and conviction must be at the assizes or in the courts at *Westminster*.

In the 5 An. c. 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* forest, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

7th. *Of herons.*

Every person, who shall shoot at, kill, or destroy any heron Shooting herons.
with gun or bow, shall, on conviction before two justices, by
confession, or oath of two witnesses, be committed to gaol for
three months, unless on conviction he pay to the church-
wardens for the use of the poor 20s. for each heron, or after
one month from his commitment become bound by recogni-
zance with two sureties in 20l. each, before two justices, not
to offend again in like manner: The recognizance to be re-
turned to the next sessions. 1 *J. c. 27. s. 2.*

No person, without his own ground, shall flea, take, or None shall take
but by hawking.
cause to be taken, by means of craft or engine, any herons,
unless it be with hawking, or with long bows; on pain of
10s. 8d. to him who shall sue by action of debt: or the
justices may call before them persons suspected, and examine
them; and if found in default, may commit them till they
have found surety for payment of the forfeiture to the king;
and the justices shall have the tenth part of the forfeiture
for their labour. 19 *H. 7. c. 11.*

No person, without his own ground, shall take any young Young herons.
herons, out of the nest; on pain of 10s. in like manner, for
every young heron. 19 *H. 7. c. 11.*

And if any person from *March 31. to June 30.* shall take Eggs.
or destroy the eggs of any heron, he shall be imprisoned for
a year, and forfeit for every egg 8d., half to the king, and
half to him that will sue by action of debt, or before the
justices of the peace. 25 *H. 8. c. 11.*

8th. *Of other wild fowl.*

In general; No manner of person from the last day of
March to the last day of *June* yearly shall by day or night
take or destroy any eggs of any kind of wild fowl, from or
any nest or place, where they shall chance to be laid by
any kind of the same wild fowl, on pain of imprisonment
for a year, and to forfeit for every egg of a bustard 20d., of
a bittour or shoveld 8d., and of other wild fowl (except
crows, ravens, boscards, and other fowl not used to be
eaten) 1d.; half to the king, and half to him that will sue
by action of debt. Also the justices of the peace may de-
termine the same, as in cases of trespasses. 25 *H. 8. c. 11.**

A. Ap-

* With regard to fowl not used to be eaten, together with
certain other noxious animals, there were provisions made by an
ancient

- A. Appointment of a gamekeeper; on 22 *Geo* 23
C. 2. c. 25. f. 2., 5 An. c. 14. f. 4., and 3 G. c. 11. f. 1. [See the Gamekeeper's Certificate, according to 48 *G. 3. c. 55. Sched. N. of that Act, A, B, C, D.*]

I A. L. esquire, lord of the manor of ——— do hereby nominate, authorize, and appoint A. G. of P. in the county of ———, yeoman, to be my gamekeeper of and within my said manor of ——— in the county aforesaid, with full power, license, and authority, to kill any hare, pheasant, partridge, or any other game whatsoever in and upon my said manor of ———

ancient statute, viz. 8 *El. c. 15.* intituled, *An act for the preservation of graine*, which it were to be wished might be revived with proper consideration of the difference of the value of money betwixt that time and the present; by which it was required that the churchwardens should levy by an assessment, and pay for the heads of every three old crows, choughes, or rookes, 1d.; of six young crows, choughes, or rookes, 1d.; and for every six egges of any of them, 1d.; for every 12 staves heads, 1d.; for every heade of merten, hawks, furesekytte, moldkytte, busarde, chagge carmerant, or ryngtale, 2d.; and for two egges of them, 1d.; for every iron or ospray's heade, 4d.; for the heade of every wood wall, pyc, jay, raven, kyte, or king's fisher, 1d.; bulfynce, or other bird that devoureth the blowth of fruit, 1d.; for the heade of every fox or graye, 12d.; and for the heade of every fytchewe, polcate, wesel, stote, fayre, bade, or wilde cat, 1d.; for the heade of every otter or hedgehogge, 2d.; for the heade of three rattes or twelve mise, 1d.; for the heade of every want or moldwarp, one halfpenny.

And by another ancient statute 24 *H. 8. c. 10.* Every township was required to keep a crow net, to destroy crows, rookes and choughs.

There is some shadow of these regulations still remaining in some parishes, where they give a reward for destroying several of the abovesaid noxious fowl and vermin. These statutes were suffered to expire, probably because in a short time there would be no need of their continuance; but it might be convenient nevertheless to revive the like provisions from time to time; and amongst the rest of the ravenous tribe to set a price now at length upon the head of that distinguished fowl, for the sake of which most of the ancient laws concerning the winged game were enacted, and which it was felony to destroy. But now the current hath received a contrary direction; and the hawk himself destroys more game than gunpowder and hailshot which have usurped his empire.

for my sole use and immediate benefit; and also to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, harepipes, snares, or other engines, for the taking and killing of conies, hares, pheasants partridges, or other game, as within the precincts of my said manor of ——— shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this ——— day of ——— in the ——— year, &c.

B. Form of a certificate for killing game. [But see as noted in the preceding form.]

I A. B. clerk of the peace for the county of C. [or as the case may be] do hereby declare that E. F. hath this day delivered into my office a paper, writing, or account, containing his name and place of abode, [or as the case may be,] hath this day registered a deputation, whereby he is appointed a gamekeeper by ——— for the manor or lands of ——— which I do hereby certify, in pursuance of an act of parliament passed in the twenty-fifth year of king George the third, intituled, *An act for repealing an act made in the twenty-fourth year of the reign of his present majesty, intituled, "An act for granting to his majesty certain duties on certificates issued with respect to the killing of game," and for granting other duties in lieu thereof.*

C. Information against a person for killing game without a lawful certificate; (founded on the 48 G. 3. c. 55. Sched. L. and 43 G. 3. c. 9.)

Westmorland. **T**HE information and complaint of A. I. of ——— in the county of ——— yeoman, made before* [me J. P. esquire, one of his majesty's justices of the peace in and for the said county,] the ——— day of ——— in the year ———. Who saith, That on the ——— day of

* These words were the form under the 25 G. 3.; but now in their place say, "us A. C. and B. C. two of the commissioners or executing an act passed in the 43d year of his majesty's reign, intituled, an act for consolidating certain provisions contained in any act or acts relating to the duties under the management of the commissioners for the affairs of taxes, and for amending the same."

—— in the year —— at —— in the county aforesaid, one A. O. of —— in the county aforesaid, shoemaker, did use a certain dog called a greyhound [or as the case may be,] for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare [or as the case may be,] without having such certificate as is required by law for that purpose; whereupon he the said A. O. hath forfeited the sum of twenty pounds; and therefore he the said A. I. prayeth the judgment of us the commissioners aforesaid in the premises.

Before me

J. P.

A. I.

D. Summons thereupon.

Westmorland. { To the constable of —— in the said county.

WHEREAS information and complaint have been made unto us [as in the information,] that A. O. of —— in the county aforesaid, shoemaker, on the —— day of —— in the year —— at —— in the county aforesaid, did use a certain dog called a greyhound [or as the case may be,] for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare [or as the case may be,] without having such certificate as is required by law for that purpose, whereupon he the said A. O. hath forfeited the sum of twenty pounds. These are therefore to require you forthwith to summon the said A. O. to appear before us at —— in the said county, the —— day of —— at the hour of —— to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under our hands and seals the —— day of —— in the year ——.

E. Conviction for killing game without a lawful certificate.

[N. B. The form of conviction in 25 G. 3. c. 50. is by 31 G. 3. c. 21. s. 4. repealed; and the following form substituted; and as no particular form is specified in the 48 G. 3. c. 55. nor in any of the acts referred to therein, it is considered that the same form is still sufficient and effectual, in any form be necessary.]

Westmorland. **B**E it remembered, that on the —— day of —— at —— A. O. of —— yeoman, was duly convicted before us A. C. and B. C. [as before

A. O. on — at — did, [here state the offence against the act, according to the fact,] *contrary to the form of the statute; and we do declare and adjudge that the said A. O. hath forfeited for his said offence the sum of — to be distributed as the law directs. Given under our hands and seals the day and year first above mentioned.*

F. Warrant of distress for killing game without a lawful certificate, (under the 25 G. 3. c. 50.)—But under the 48 G. 3. c. 55. and 43 G. 3. c. 99. the penalties are to be recovered as the duties are (and see Sect. IV. for the mode of recovery.)

Westmorland. { To the constable of —.

WHEREAS A. O. of — in the said county, shoemaker, is this day convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. on the — day of — in the — year of the reign of — at — in the said county, did use a certain dog called a greyhound, [or as the case may be,] for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare, [or as the case may be,] without having such certificate as is required by law for that purpose, whereby he the said A. O. hath forfeited the sum of 20l. These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of [Six] days next after such distress by you taken, the said sum shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale you do pay the sum of — to A. I. of — in the said county of — who informed me of the said offence, and the sum of — to — for the use of his majesty; returning the overplus (if any) on demand unto him the said A. O. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 20l. that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the — day of —, &c.

G. Commitment for want of distress. (See Note to the last precedent.)

Westmorland. { To the constable of _____ in the said county, and to the keeper of the house of correction at _____ in the said county.

WHEREAS A. O. of _____ in the said county, shoemaker, was on the _____ day of _____ in the _____ year of _____ convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. on the _____ day of _____ in the year aforesaid, at _____ in the said county did use a certain dog called a greyhound, [or as the case may be] for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare [or as the case may be] without having such certificate as is required by law for that purpose, by virtue whereof he the said A. O. hath forfeited the sum of 20l.; and whereas on the said _____ day of _____ in the year aforesaid, I did issue my warrant to the constable of _____ to levy the said sum of 20l. by distress and sale of the goods of him the said A. O. and to apply the same according to law; and whereas it duly appears to me as well on the oath of the said constable as otherwise that he the said constable hath used his best endeavours to levy the said sum on the goods of him the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same; these are therefore to command you the said constable of _____ aforesaid to apprehend the body of the said A. O. and him safely to convey to the house of correction at _____ in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said house of correction to receive into your custody in the said house of correction the said A. O. and him there safely to keep for the space of three calendar months, unless such penalty shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under my hand and seal the _____ day of _____ in the year, &c.

H. Warrant to search for dogs and engines; on the 22 & 23 C. 2. c. 25. s. 2.

Westmorland. To _____.

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace in and for the said county,

county, upon the oath of A. I. of ——— in the said county, yeoman, that he the said A. I. hath good ground to suspect and doth suspect that A. O. of ——— aforesaid, in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound [gun, net, &c.] to kill and destroy the game; these are therefore to command you in his majesty's name to enter into and search in the day time the houses, out-houses, and other places of him the said A. O. at ——— aforesaid, and if you there find any greyhound, &c. that you seize and keep the same for the use of A. I. esquire, lord of the manor of ——— in which manor the said houses, out-houses, and other places are situate and do lie, or otherwise that you cut in pieces or destroy the same. Given under my hand and seal the ——— day of ——— in the ——— year, &c.

I. Information against a person for keeping dogs or engines; on the 5 *An. c. 14. f. 4.*

Westmorland. ^f*THE* information and complaint of A. I. o ——— in the county of ——— yeoman' made before me J. P. esquire, one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year ———. Who saith, That on the ——— day of ——— in the year ——— at the parish of ——— in the county aforesaid, one A. O. of ——— in the county aforesaid, shoemaker, did keep and use a certain dog called a greyhound [or as the case is] to kill and destroy the game, being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of 100l. per annum, or for term of life, nor then having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l. nor then being the son or heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being game-keeper of any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed, by writing under his or her hand and seal to take, kill, or destroy the game, or any sort of game whatsoever, in or upon any lordship, manor, or royalty, nor then being truly or properly a servant of or to any lord or lady of any lordship, manor, or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game or any kind of game whatsoever for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then being a person

son in any manner whatsoever qualified or authorized to kill game, or to keep any greyhound for the destruction of the game of this kingdom, whereby he the said A. O. hath forfeited the sum of five pounds. And thereupon he the said A. I. prayeth the judgment of me the justice aforesaid in the premises, and that he may have one moiety of the same forfeiture, according to the form of the statute in that case made, and that the said A. O. may be summoned to answer the premises before me the justice nforesaid.

Before me

A. I.

J. P.

K. Summons thereupon.

Westmorland. } To the constable of ——— in the
said county.

WHEREAS information and complaint have been made before me J. P. esquire, one of his majesty's justices of the peace for the said county, that A. O. of ——— in the county aforesaid, shoemaker, on the ——— day of ——— in the year ——— in the parish of ——— in the county aforesaid, did keep and use a certain dog called a greyhound [or as the case is] to kill and destroy the game, he the said A. O. not being qualified by the laws of this realm so to do; These are therefore to require you forthwith to summon the said A. O. to appear before me at ——— in the said county, the ——— day of ——— at the hour of ——— to be further dealt with according to law. And be you then there to certify what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year ———.

L. Conviction for keeping greyhounds, and coursing hares; not being qualified.

Wiltshire, } **B**E it remembered, that on the 25th day of Sep-
to wit. } tember, in the 9th year of the reign of his
majesty king George the third, of Great Britain, &c. at En-
ford, in the county of Wilts, Thomas Butt, of Everly, in the
said county of Wilts, yeoman, in his proper person cometh before
us W. Beach, Edw. Poore, and John Poore, esquires, three of
the justices of our said lord the king assigned to keep the peace in
the said county of Wilts, and also to hear and determine divers
felonies, trespasses, and other misdemeanors done and committed in
the said county of Wilts, and now here giveth us the said justices to
under-

understand that one T. Chandler, of the parish of Uphaven, in the county of Wilts, aforesaid, husbandman, within three months now last past, to wit, on the 22d day of September, in the said 9th year of the reign of our said sovereign lord the king that now is, the said T. C. not having then lands or tenements, or any other estate of inheritance (a) in his own or his wife's right of the clear yearly value of 100l. or for term of life, nor any lease or leases for ninety-nine years, or any longer term, of the clear yearly value of 150l., nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the lord of any manor or royalty, nor then being the owner or keeper of any forest, park, chase, or warren, nor then being game-keeper of any lord or lady, of any lordship or manor, nor then being truly and properly a servant of or to any lord or lady of any lordship or manor, nor then being immediately employed and appointed to take and kill the game for the sole use and immediate benefit of such lord or lady, nor being in any other manner qualified, empowered, licensed, or authorized by the laws of this realm either to take, kill, or destroy any sort of game whatsoever, or to keep or use any greyhounds for that purpose, did, at the parish of Uphaven in the county of Wilts aforesaid, keep and use three dogs called greyhounds, to kill and destroy the game, against the form of the statute in such case made and provided. Whereupon the said T. C. afterwards, to wit, on the 26th day of September, in the 9th year aforesaid, at Uphaven aforesaid, had notice of the said information, and of the offence therein charged upon him as aforesaid, and was then and there by us the said justices in due manner summoned to appear before us the said justices at E. aforesaid, in the county of Wilts aforesaid, on the 2d day of October, in the 9th year aforesaid, to make his defence against the said charge contained in the information aforesaid. And thereupon afterwards, that is to say, on the said 2d day of October, in the 9th year of the reign of our said sovereign lord the king at E. in the county of Wilts aforesaid, he the said T. C. being duly summoned as aforesaid in this behalf before us the justices aforesaid appeareth and is present in order to make his defence against the said charge contained in the said information; and having heard the same, he the said T. C. is asked by us the said justices if he can say any thing for himself why he the said T. C. should not be convicted of the premises above charged upon him in form aforesaid, who pleadeth and saith, that he admits he was not qualified to kill game, and that he was out on a piece of down in the said parish of Uphaven, on the said

(a) R. v. Earnshaw, 15 E. R. 456.

22d day, with three greyhound dogs, and one spaniel dog, but that all the said dogs were not his property; but does not shew to us the said justices any sufficient cause why he should not be convicted of the offence in the said information above contained against him. And further at the same time and place, to wit, on the 2d day of October, in the year aforesaid, at E. aforesaid, within the said county, one credible witness, to wit, Levi Woodham, of the parish of Everly, in the county of Wilts, husbandman, cometh before us the justices aforesaid, and before us the same justices, in the presence of the said T. C. upon his oath on the holy gospel of God. to him then and there by us the said justices aforesaid administered (we the said justices being duly authorized and empowered to administer the said oath to the said L. W. in this behalf,) deposeth, sweareth, and on his oath affirmeth and saith in the presence and hearing of the said T. C. that the said T. C. on the 22d day of September aforesaid in the year aforesaid, at the parish of Uphaven aforesaid in the county aforesaid, did keep and use three greyhounds to kill and destroy the game, and that he then and there saw the said T. C. walking across the said piece of down. the same being a place where hares usually lie, with the said three greyhound dogs and one spaniel dog, with a pole or stick in his hand. And the said T. C. then, to wit, on the 22d day of September aforesaid had not any lands or tenements, &c. (negativig all the qualifications exactly as in the (a) information) nor in any other manner qualified, empowered, licensed, or authorized by the laws of this realm to take, kill, or destroy any sort of game, or to keep or use any greyhounds for that purpose. Whereupon, and upon hearing and duly examining the whole matter aforesaid, it manifestly appears to us the said justices, that the said T. C. was not on the 22d day of September aforesaid in any manner qualified, empowered, licensed or authorized by or according to the laws of this realm to keep or use any greyhounds to kill and destroy the game, and that the said T. C. is guilty of the premises above charged upon him in and by the information aforesaid. Therefore the said T. C. on the said 2d day of October, in the year aforesaid, at E. aforesaid, in the county aforesaid, before us the justices aforesaid, by the testimony of the said L. W. a credible witness as aforesaid, according to the form of the statute aforesaid, is convicted of the offence aforesaid, and hath forfeited the sum of 5l. of lawful money of Great Britain to be distributed as the statute aforesaid doth direct. In witness whereof we the said justices aforesaid, to this present record of conviction have set our hands and seals, at E. aforesaid, in the county aforesaid, the said

(a) See title "Conviction."

2d day of October, in the 9th year of the reign of our lord the king that now is (b).

If he doth not appear upon the summons, or confess the offence, the form may be varied accordingly; as is set forth specially under the title *Contession*.

M. Warrant to distrain 5l. for keeping dogs or engines; on the 5 *An. c. 14. s. 4.*

Westmorland. To —————.

WHEREAS A.O. of ——— in the said county, shoemaker, is this day convicted before me J. P. e quire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. being a person not qualified by the laws of this realm so to do, on the ——— day of ——— in the ——— year of the reign of ——— did keep and use in the parish of ——— aforesaid, in the county aforesaid, a certain dog called a greyhound to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5l. to be distributed as herein after is mentioned; These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of ——— (a) days next after such distress by you taken, the said sum together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of 5l. to A. I. of ——— in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5l. to the overseers of the poor of the parish of ——— aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said A. O., the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 5l. that then you certify the same to me, together with the return of this precept. Given under my hand and seal the ——— day of ——— in the ——— year of ———.

(b) This precedent (excepting the words inserted upon the authority of *R. v. Earnshaw*,) was drawn by the late Mr. *Dunning*, afterwards *Ld. Ashburton*. (Mr. *Durnford's* note.)

(a) Not less than 4, nor more than 8 days. 27 G. 2. c. 20. s. 1.

N. Commitment for want of distrefs, for keeping dogs or engines ; on the 5 *An. c. 14. f. 4.*

Westmorland. { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

*W*HEREAS A. O. of ——— in the said county, shoemaker, was on the ——— day of ——— in the ——— year of ——— convicted before me J. P. esquire one of his majesty's justices of the peace in and for the said county, upon the oath of A. W., a credible witness, for that he the said A. O., not being a person by the laws of this realm qualified so to do, on the ——— day of ——— in the year aforesaid, did keep and use in the parish of ——— aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5*l.*; and whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 5*l.* by distrefs and sale of the goods of him the said A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distrefs can be had whereon to levy the same; These are therefore to command you the said constable of ——— aforesaid to apprehend the body of the said A. O. and him safely to convey to the house of correction at ——— in the said county, and there deliver him to the said keeper thereof, together with his precept. And I do hereby command you the said keeper of the said house of correction to receive into your custody in the said house of correction the said A. O., and him there safely to keep for the space of three months; and for so doing this shall be your sufficient warrant. Given under my hand and seal the ——— day of ——— in the ——— year, &c.

O. *Certiorari* bond, on a conviction for keeping dogs or engines ; on the 5 *An. c. 14. f. 2.*

*K*NOW all men by these presents, &c. Whereas the above bound A. O. was lately convicted before J. P. esquire, one of his majesty's justices of the peace in and for the county of ——— aforesaid, of keeping and using at ——— aforesaid, in the said county, a greyhound, to kill and destroy the game; and whereas the

the said A. O. hath since his said conviction sued out his majesty's writ of certiorari to remove the same and the proceedings thereupon before the king himself wherever he shall be in England on — [the day of the return of the certiorari]: The condition of the above obligation is such that if the above-bound A. O. do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said A. I. within 14 days after the said conviction shall be confirmed, or a procedendo granted thereupon his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of certiorari; then the above written obligation shall be void, otherwise of force.

P. Warrant against an innkeeper for having game in his possession; on the 5 *An. c. 14. s. 2.*

Westmorland. To the constable of —.

WHEREAS A. I. of — hath this day made information and complaint upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that on the — day of — now last past, A. O. of — in the parish of — in the county aforesaid, innkeeper at — aforesaid, in the parish and county aforesaid, in the house of him the said A. O. then and there had in his possession two partridges [or, did offer to sell two partridges, or as the case shall be,] he the said A. O. being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of 100l. per annum, or for term of life, nor then having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l., nor then being the son and heir apparent of an esquire, or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being truly or properly a servant of or to any lord or lady of any lordship, manor, or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game, or any kind of game whatsoever, for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then being a person in any manner whatsoever qualified or authorized to kill game, or to have the said two partridges;

partridges in his custody or possession, against the form of the statute in that case made and provided; These are therefore to command you, to bring the said A. O. before me or some other of his majesty's justices of the peace for the said county, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, the ——— day of ——— in the ——— year, &c.

Conviction of an innkeeper, for having two partridges in his custody and selling the same; on the 5 *An. c.* 14. and 28 *G. 2. c.* 12.

Westmorland. *BE* it remembered, that on the 30th day of October in the 43d year of the reign of our sovereign lord George the third, by the grace of God of he united kingdom of Great Britain, &c. at W. in the county of Westmorland, A. I. of L. in the county of Chester, esquire in his proper person. cometh before me J. P. clerk, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same county, and then and there giveth me the said justice to understand and be informed that within three months now last past, that is to say, on the 2d day of October in the 22d year of the reign of our said lord the present king at the parish of M. in the said county of W., A. O. of the parish of M. aforesaid, innkeeper, being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of 100l. per annum, or for term of life, nor then having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l. nor then being the son nor heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being game-keeper to any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or their hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being truly or properly a servant of or to any lord or lady of any lordship, manor, or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game or any kind of game whatsoever for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then being a person in any manner whatsoever qualified or authorized to kill game, and being then and there an innkeeper, unlawfully had

had in his custody two partridges, and did then and there sell (or offer to sell, (a) the same partridges, contrary to the form of the statute in that case made and provided; and the said A. I. the said informer prayeth that the said A. O. may be convicted of the said offence above laid to his charge. Whereupon the said A. O. having been duly summoned in this behalf to answer and make his defence to the said information, and the offence therein charged upon him before me the said justice, afterwards, that is to say, on the 13th of November in the 23d year aforesaid, at W. aforesaid, in the said county of W., appeareth and is present before me the said justice, in order to answer and make good his defence to the said information and offence charged on him as aforesaid; and he the said A. O. having heard the same, is asked by me the said justice if he can say any thing for himself, why he the said A. O. should not be convicted of the premises above charged on him in form aforesaid, who pleadeth, that he is not guilty of the said offence: Nevertheless on the 13th day of November in the 23d year aforesaid, at W. aforesaid, in the said county of W., one credible witness, to wit, J. W. of H. in the said county of W., yeoman, cometh before me the said justice in his own proper person and before me the said justice the said J. W. being then and there, to wit, on the day and year last aforesaid at W. aforesaid, duly sworn touching the premises upon the holy gospel of God upon his corporal oath to him then and there administered by me the said justice, (I the said justice having then and there full power and authority to administer the said oath to the said J. W.) deposeth, sweareth, and upon his oath aforesaid affirmeth and saith in the presence and hearing of the said A. O. that within three months next before the said information was made before me the said justice by the said A. I. as aforesaid, to wit, on the said 2d day of October in the 22d year aforesaid, at the parish of M. aforesaid, he the said A. O. being a person not then having lands, tenements, or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of 100l. per annum, or for term of life, nor then having lease or leases of 99 years, or for any longer term of the clear yearly value of 150l. nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being game-keeper of any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being truly or properly a servant of or to any lord or lady of any lordship, manor, or royalty, nor then being immediately employed or appointed to take, kill, or destroy the game or any kind of game

(a) This should be stated according to the evidence. If the offender only had the birds in his custody, the information should be confined to that part; if he sold, omit the offer to sell; if he offered to sell, omit the allegation that he actually sold.

whatsoever for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then being a person in any manner whatsoever qualified or authorized to kill game, and then and there being an innkeeper, unlawfully had in his custody two partridges, and did then and there sell (or offer to sell) the same contrary to the form of the statute in that case made and provided; whereupon all and singular the matters and things in the said information and evidence contained being by the said A. O. then heard and fully understood, the said A. O. is by me the said justice asked what he hath to say or offer in his defence against the said information and offence, and in answer to the evidence given as above-mentioned, and what he hath to say why he should not be convicted of the premises so charged upon him; and forasmuch as upon hearing and fully understanding all and every the matters and things by the said A. O. alleged and proved in his defence touching the premises in the said information specified, it manifestly appears to me the said justice that the said A. O. is guilty of the premises above charged upon him in the said information; it is therefore adjudged by me the said justice, upon the testimony of the said J. W. a credible witness, upon his oath before me the said justice so taken as aforesaid, that the said A. O. on the said 2d day of October in the 22d year aforesaid, at the parish of M. aforesaid, within three months next before the said information was made before me the said justice by the said A. I. as aforesaid, unlawfully had in his custody two partridges, and did then and there sell (or offer to sell) the same, contrary to the form of the statute in that case made and provided; and that the said A. O. had not then any lands or tenements or any other state of inheritance in his own right or in his wife's right of the clear yearly value of 100l. per annum, or for term of life, nor then had lease or leases for 99 years, or for any longer term, of the clear yearly value of 150l. nor then was the son and heir apparent of an esquire or other person of higher degree, nor then was the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then was lord of any manor, lordship, or royalty, nor then was game-keeper of any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then was truly or properly a servant of or to any lord or lady of any lordship, manor, or royalty, nor then was immediately employed or appointed to take, kill, or destroy the game or any kind of game whatsoever for the sole use or immediate benefit of any lord or lady of any lordship, manor, or royalty, nor then was a person in any manner whatsoever qualified or authorized to kill game, and was then and there an innkeeper: And thereupon I the said justice, on the said 13th day of November in the 23d year

year aforesaid, at W. aforesaid, in the said county of W., do convict the said A. O. of the offence aforesaid in and by the said information charged against him, and he the said A. O. is hereby convicted thereof by me the said justice, upon the oath of one credible witness, according to the form of the statute in that case made and provided: and I the said justice do adjudge that the said A. O. for his offence aforesaid hath forfeited the sum of 10l. of lawful money of Great Britain, that is to say, the sum of 5l. for each of the said partridges: And I do adjudge that one half of the said sum of 10l. be paid to the said informer A. I. and the other half of the said sum of 10l. be paid to the poor of the parish of M. aforesaid, where the said offence was committed; according to the form of the statute in that case made and provided. In witness whereof I the said J. P. the justice aforesaid have to this present record of conviction set my hand and seal, at W. aforesaid, in the said county of W., the said 13th day of November in the 23d year aforesaid, and in the year of our Lord 1782.

Though the statute, 5 An. c. 14. makes no distinction between those innkeepers who are qualified by estate and those who are not, it is more safe to allege want of qualification, unless the defendant actually sold the birds, or offered them to sale; in which case, as the statute 28 Geo. 2. c. 12. inflicts the penalty, whether the person be qualified or not, it may be proper to omit the whole of what is stated in the conviction respecting qualifications.

Q. Warrant to levy 5l. on the goods of an innkeeper convicted of having game in his custody; on the 5 An. c. 14. s. 2.

Westmorland. To the constable of ———.

WHEREAS A. O. of ——— in the parish of ——— in the county aforesaid, innkeeper, is on this present ——— day of ——— in the ——— year of the reign of ——— duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year of ——— at the parish of ——— aforesaid, in the county aforesaid, had in his custody and possession two partridges, he the said A. O. being no way qualified by the laws of this realm to have the said two partridges in his custody or possession, against the form of the statute in that case made, by reason whereof he the said A. O. hath forfeited the sum of 10l. These are therefore to require you to levy the said sum of 10l. by distress of the goods of him the said A. O.
and

and if within the space of — (a) days next after such distress by you taken, the said sum of 10l. together with reasonable charges of taking and keeping the said distress shall not be paid; that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale that you do pay one half of the said sum of 10l. to A. I. of — yeoman, who informed me of the said offence, and the other half to the poor of the parish of — aforesaid, within which parish the said offence was committed; returning to him the said A. O. the overplus on demand; the reasonable charges of taking, keeping, and selling, the said distress, being first deducted; and if sufficient distress cannot be had of the goods of the said A. O. that you certify the same to me together with the return of this precept. Given under my hand and seal the — day of — in the — year of —.

R. Commitment on the same for want of distress;
on the 5 An. c. 14. s. 2.

Westmorland. { To the constable of — in the said county,
and to the keeper of the house of correction at — in the said county.

WHEREAS A. O. of — in the said county, innkeeper, was on the — day of — duly convicted before me J. P. esquire one of his majesty's justices of the peace in and for the said county upon the oath of A. W. of — a credible witness, for that he the said A. O. on the — day of — in the — year of — at the parish of — aforesaid, in the county aforesaid, had in his custody and possession two partridges; he the said A. O. being no way qualified by the laws of this realm to have the said two partridges in his custody or possession against the form of the statute in that case made, by reason whereof he the said A. O. hath forfeited the sum of 10l. And whereas on the said — day of — in the year aforesaid I did issue my warrant to the constable of — to levy the said sum of 10l. by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the said statute; and whereas it duly appears to me as well on the oath of the said constable of — as otherwise that he the said constable of — hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same; these are therefore to require you

(a) Not less than 4, nor more than 8 days. 27 G. 2. c. 10. s. 1.
the

the constable of ———— aforesaid to carry the said A. O. to the said house of correction of ———— aforesaid and deliver him to the said keeper thereof together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprize; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, the ———— day of ————.

S. Warrant to search for venison or engines; on the
16 G. 3. c. 30.

Westmorland. To the constable of ————.

WHEREAS A. I. of ———— in the said county, yeoman, hath this day made oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that there is reason to suspect that A. O. of ———— in the said county, taylor, hath in his custody or possession or in his dwelling house, out-house, yard, garden, or other place at ———— aforesaid, a deer, which hath been unlawfully killed, or the head, skin, or other part thereof, as also divers slips, nooses, toyles, snares, and other engines or some of them for the unlawful taking of deer: These are therefore to require you, that you do forthwith search him the said A. O. and his said dwelling house, out-house, yard, garden, or place, at ———— aforesaid; and if on such search you shall find any deer suspected to have been unlawfully killed, or the head, skin, or other part thereof, or any slip, noose, toyle, snare, or other engine suspected to be used for the unlawful taking or killing of deer, that you bring the same and also him the said A. O. before me or some other of his majesty's justices of the peace for the said county, to be examined concerning the premises, and further dealt with according to law. Herein fail not. Given under my hand and seal the ———— day of ———— in the year ————.

Note. The precedents relating to deer stealers were omitted by Mr. Durnford in the last edition of this work, with a note that the offence was now made felony.

Gaming.

Sect. I. Of Gaming in general, and the statutable provisions respecting it.

[33 H. 8. c. 9. f. 11, 12. 14—16. 18. 22, 23. —
31 El. c. 5. f. 7. — 9 An. c. 14. f. 2, 3. — 2 G. 2.
c. 28. f. 9. — 18 G. 2. c. 34. f. 3. 7. — 25 G. 2.
c. 36. f. 1. 5, 6, 7. 9, 10.]

II. *Of wagers.*

[16 C. 2. c. 7. f. 2; 3. — 9 An. c. 14. f. 1. 4—8.
— 18 G. 2. c. 34. f. 8. 10.

III. *Of lotteries.*

[10 & 11 W. c. 17. f. 1—3. — 9 An. c. 6. f. 56. —
10 An. c. 26. f. 109. — 8 G. c. 2. f. 27. 36. —
9 G. c. 19. f. 4, 5. — 6 G. 2. c. 35. — 12 G. 2.
c. 28. f. 1—5. 8. — 13 G. 2. c. 19. f. 9. — 18 G. 2.
c. 34. f. 1—7. — 27 G. 3. c. 1. f. 2, 3. 7. —
34 G. 3. c. 40. f. 37.

Gaming in public-houses. See title *Alchouses*.

Gaming not an
offence at com-
mon law.

MR. Dalton says that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se* of their own nature, but only prohibited by statute. *Dalt. c. 46.*

Gaming-houses
nuisances.

But it hath been said that all common gaming-houses are nuisances in the eye of the law, as being great temptations to idleness, and apt to draw together numbers of disorderly persons. *1 Harw. c. 75. f. 6.*

Gaming-houses
prohibited by
the 33 H. 8.

By the statute of 33 H. 8. c. 9. No person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh, cayls, half-bowl, tennis, dicing table, carding, or any other game before prohibited, or any unlawful new game now invented, or any other new unlawful game hereafter to be invented, on pain of forfeiting 40s. a day. *f. 11.*

But it was resolved upon this clause, in the third year of J. 1., that if the guests in an inn or tavern call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, these are not within the statute; for although the games be used in an inn, tavern, or other house, yet, if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute, nor is such person that plays in such house that is not kept for lucre or gain within the penalty of that law. *Dalt. c. 46.*

Haunting gam-
ing-houses.

And moreover, by the same statute it is further enacted, that every person using and haunting any of the said houses and plays, and there playing, shall forfeit 6s. 8d. 33 H. 8. c. 9. *f. 12.*

Power of the
justices as to the
keepers of such
houses, and those
found there.

And all and every justices of the peace in every shire, mayors, sheriffs, bailiffs, and other head officers in every city, town, and borough, may enter all such houses, places, and alleys, where such games shall be suspected to be

holden,

holden, exercised, used, or occupied, and as well the keepers of the same, as also the persons there haunting, resorting, and playing, may take, arrest, and imprison, and keep in prison until the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games. *f. 14.*

And the mayors, sheriffs, bailiffs, constables, and other head officers, within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses, alleys, plays, or places shall be suspected to be had, kept and maintained; and if they shall not make such search at the furthest once a month, if the case so require, every such person offending shall forfeit 40s. for each month. *f. 15.*

And of officers
in cities and
towns.

By the same act, no manner of artificer, or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game, out of *Christmas*, on pain of 20s. for every time; and in *Christmas* to play at the said games in their masters' houses, or in their masters' presence; and also no person shall at any time play at bowl or bowls in open places out of his garden or orchard, on pain of 6s. 8d. for every time of offending. *f. 16.*

Artificers and
servants.

But any master may license his servant to play at cards, dice, or tables, with himself, or with any other gentleman repairing to his said master openly in his house, or in his presence. *f. 22.*

Masters may li-
cense such.

And any nobleman or other person having manors, lands, tenements, or other yearly profits for life, in his own or his wife's right, of 100l. a year, may command or license his servants, or family of his house to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same house. *f. 23.*

Also certain per-
sons may.

And all justices of peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, *finding or knowing* any person using unlawful games, contrary to this act, may commit every such offender to ward, there to remain without bail or mainprize till he be bound by obligation to the king's use, in such sum as by the discretion of the said jus-

Punishing offen-
ders using un-
lawful games.

tices, mayors, bailiffs, or other head officers, shall be thought reasonable, that they shall not from thenceforth use such unlawful games. *f. 16.*

By the 2 *G. 2. c. 28.* Where it shall be *proved on the oath of two witnesses* before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute of *H. 8.* the said justice shall have power to commit him to prison without bail, unless and until he shall enter into one or more recognizance or recognizances with sureties, or without, at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game. *f. 9.*

Application of
the penalties.

And where any of the forfeitures above mentioned shall be found within the precinct of any franchise or leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. *33 H. 8. c. 9. f. 18.*

How to be re-
covered.

But by the 31 *El. c. 5.* All suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. *f. 7.*

No privilege of
parliament.

And no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any public or common gaming-house, or any house, room, or place for playing at any before or now prohibited game. *18 G. 2. c. 34. f. 7.*

Houses of public
amusement
within London
and 20 miles
thereof to be li-
censed.

By the 25 *G. 2. c. 36.* Any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in *London* and *Westminster*, or within 20 miles thereof, without license from the last preceding *Michaelmas* quarter sessions, under the hands and seals of four or more justices there assembled (except the theatres of *Drury-lane*, *Covent-garden*, and *Hay-market*, and other entertainments exercised by letters patent or license of the crown, or of the lord chamberlain, *f. 4.*) shall be deemed a disorderly house or place; and the keeper thereof shall forfeit 100*l.* with full costs to him who shall sue (in six months) in any of the courts at *Westminster*, and be otherwise punishable as in cases of disorderly houses. And the person who shall appear to act as master, or as having the management of such gaming house or other disorderly house, shall be deemed a keeper thereof, and liable as such. And it shall be lawful for any constable, or other person being authorized by warrant under

The person act-
ing as master to
be deemed the
keeper.

under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law. *f. 2.*

Which said license shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be affixed and kept up in some notorious place, in large capital letters over the door or entrance of every such licensed house or place, *Licensed pursuant to act of parliament of the twenty fifth of king George the second*; and it shall not be opened for such purposes before five in the afternoon. And the affixing and keeping up such inscription, and the said limitation in point of time, shall be inserted in and made conditions of such license; and in case of a breach of either of the said conditions, the license shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed; nor shall any new license be granted. *f. 3.*

License.

And to encourage prosecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, the constable, on notice given him in writing by any two inhabitants of the parish paying scot and lot, of any person keeping any such house, shall forthwith go with them to a justice of the peace; and shall, (on their making oath that they believe the contents of such notice to be true, and entering into a recognizance of 20*l.* each to produce material evidence against such person for such offence,) enter into a recognizance of 30*l.* to prosecute with effect such person for such offence at the next sessions or assizes as to the justices shall seem meet; and on the constable entering into such recognizance, the justice shall issue his warrant for bringing the accused persons before him, and shall bind them over to appear at the said sessions or assizes, there to answer for such bill of indictment as shall be found against them for such offence, and shall also, if he thinks fit, demand and take surety for their good behaviour in the mean time, and until such indictment shall be found, heard, and determined, or be returned by the grand jury not to be a true bill. *f. 5, 6.*

Constable's power relative to gaming houses.

If the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20*l.* to each of the said inhabitants. *f. 7.*

Penalty.

Who shall be deemed master.

The person appearing or acting as master, or as having the care and management of any gaming house, shall be taken to be the keeper thereof, and liable as such. *f. 8.*

Parishioner may give evidence.

And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entered into such recognizance. *f. 9.*

Constable's expenses: reward to the prosecutor.

The constable shall be allowed all the reasonable expenses of the prosecution, to be ascertained by two justices; and shall be paid the same by the overseers of the poor; and if such person be convicted, the overseers shall forthwith pay 10*l.* to each of such inhabitants; and on neglect or refusal to pay on demand the said sums of 10*l.* and 10*l.* such overseers and each of them shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid. *f. 5.*

And no indictment for such offence shall be removed by *certiorari*. *f. 10.*

Losing or winning 10*l.* or upwards at a time, or 20*l.* in 24 hours.

By the 9 *An. c. 14.* Any person who shall at any time or sitting, by playing at cards, dice, tables, or other game or games, *whatsoever*, or by betting on the sides of such as do play, lose to any one or more persons so playing or betting in the whole the sum or value of 10*l.*, and shall pay or deliver the same or any part thereof; the person so losing and paying or delivering the same shall be at liberty in three months then next to sue for and recover the same with costs in any court of record; and if he shall not *bonâ fide* sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. *f. 2.*

Every person who shall be so liable to be sued for the same shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won at play. 9 *An. c. 14. f. 3.* 18 *G. 2. c. 34. f. 3.*

This is a remedial act; and there is a clear distinction between remedial and penal acts, that in the former, a debt is due to the party grieved before the commencement of the action but not in the latter.

The assignees of a bankrupt may recover from the winner money lost, at play, by the bankrupt before his bankruptcy in an action of debt on the statute 9 *An. c. 14.*; the meaning of the act being that the money lost and paid to the winner is part of the property of the loser. *Brandon v. Pate*, 2 *H. Bl. R.* 308.

By 9 *An. c. 14. f. 5.* If any person shall by any fraud, circumvention, deceit, or unlawful device or ill practice in playing at or with cards, dice, or any of the games (in this act aforesaid,) or by bearing a part in the stakes, wagers, or

The stat. of *An.* is a remedial act.

Fraudulent winning.

adventures, or by betting on the sides of such as do play, win, obtain, or acquire to himself or any other any sum of money or other valuable thing whatsoever above the sum of 10*l.*, and being convicted upon an indictment or information, he shall forfeit five times the value of the money or thing so won: and in case of such ill practice shall be deemed infamous, and suffer corporal punishment as in cases of wilful perjury. The penalty to be recovered by those who will sue.

By *s.* 6. Any two justices may cause to come before them any person whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such persons shall not make it appear that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default thereof shall commit him to the common gaol, there to remain till he find such securities.

Justices may call before them suspected gamblers.

s. 8. Relates to penalties for assaults and challenges on account of money won by gaming.

At any time or sitting] *M.* 19 *G.* 3. *Bones v. Booth.* On a motion for a new trial, *Perryn* Baron, reported from the last *Bristol* assizes, that the action was brought to recover back 14 guineas won by gaming, upon the statute of 9 *An.* The play was at a coffee-house in *Bristol*. They played at all-fours for two guineas a-game, from *Monday* evening to *Tuesday* evening, without any interruption, except for an hour or two at dinner; but the plaintiff and defendant never parted company. It was insisted at the trial that this was not won at any *one sitting* so as to fall within the statute, because the dinner had intervened. But the judge thought otherwise; however, the jury found a verdict for the defendant, much to the dissatisfaction of the judge. On shewing cause it was insisted that a new trial in an action for a penalty was unprecedented: And that as both parties were gamblers, neither was entitled to any favour or indulgence from the court.—*Gould* J. (in the absence of *De Grey* Ch. J.) was clearly for granting a new trial, the verdict being manifestly contrary to evidence. The statute (with respect to the party losing) is *remedial*, not *penal*. He is to recover back his money, and to that end the 3d section of the statute allows a bill in equity for a discovery; which plainly shews that it was not considered as a penal statute. Had this been a proceeding on that branch of the statute, which inflicts pillory or other corporal punishment, it had been otherwise.—*Blackstone* J. of the same opinion. The statute makes the winning of 10*l.* at *one time or sitting*, a

What is a losing at *one time*, and what a losing at *one sitting*.

nullity; and therefore gives the loser an action to recover back what still properly continues to be his own money. To lose 10*l.* at one *time*, is to lose it by a single stake or bet; to lose at one *sitting* is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time.—*Nares J.* of the same opinion. The statute is *remedial* where the action is brought by the party injured, but *penal* where brought by a common informer. And the rule was made absolute for a new trial. 2 *Black. R.* 1226.

Gaming houses.

By 18 G. 2. c. 34. *f.* 1. No person shall keep any house, room, or place for playing, or permit any person within any such house, &c. to play at the game of roulette, (or roly-poly) or at any other game with cards or dice, already prohibited by law; and if any person shall keep such house, &c. for playing, or permit any person to play as aforesaid, he shall incur the penalties of the 12 G. 2. c. 28.

Playing at roly-poly.

And if any person shall play at roulette (or roly-poly,) or at any game with cards or dice, already prohibited by law, he shall also incur the pains and penalties of the 12 G. 2. c. 28. *f.* 2.

Power of justices under 18 G. 2. c. 34.

By *f.* 4. Persons having jurisdiction to hear and determine informations upon the statutes against excessive gaming, may upon any information exhibited before them for offences against this act, summon any person (other than the party accused) to appear before them at a certain day, time, and place; and to give evidence for the discovery of the truth of the matter in the said information contained; in case of neglect and refusal to appear, or if on appearing, such person shall refuse to give evidence or shall give false evidence, he shall forfeit 5*l.* to be levied by distress and sale; and in default of sufficient distress, he shall be committed to the common gaol for six months.

Witnesses.

By *f.* 5. Persons may be witnesses, though they have played, betted, or staked at any such prohibited games.

Persons winning or losing certain sums liable to be indicted, &c.

And by *f.* 8. If any person shall win or lose at play, or by betting, at any one time, the sum or value of 10*l.*, or within 24 hours the sum or value of 20*l.*, he shall be liable to be indicted for such offence within 6 months after it is committed, before the justices of the king's bench, assize, gaol delivery, or grand sessions: and on conviction shall be fined 5 times the value of the sum so won or lost; which fine (after charges as the court shall adjudge reasonable are allowed to the prosecutors and evidence) shall go to the poor where the offence was committed.

By *f.* 10. The 9 *Ann. c.* 11. is not to be invalidated by this act.

By 30 G. 2. c. 24. If any person licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his house, out-house, ground, or apartments thereto belonging, shall knowingly suffer any gaming with dice, draughts, shuffle-boards, mississippi, or billiard tables, skittles, nine-pins, or with any other implement of gaming in his house, &c. by any journeymen, labourers, servants, or apprentices, he shall on conviction on his own confession or on the oath of one witness, before one justice within six days after the offence shall be committed, for every such offence forfeit 40s., and for every other like offence 10l.: to be levied by distress and sale, by warrant from the convicting justice: $\frac{1}{4}$ th of the sum forfeited to be paid to the churchwardens of the parish, for the use of the poor; and the other $\frac{3}{4}$ th part to the informer.

Innkeepers permitting gaming.

By s. 15. If any journeyman game in any house, &c. where liquors shall be sold, and there be complaint thereof on oath before one justice, he shall issue his warrant to some constable or other peace officer of the parish wherein the offence is charged to have been committed, or where the offender shall reside, to carry him before some justice of such county or place; and on conviction on oath, or confession, he shall forfeit not exceeding 20s. and not less than 5s. as the convicting justice shall order: $\frac{1}{4}$ th to be paid to the informer, and $\frac{3}{4}$ th to the poor of the parish where, &c. and shall be paid to the overseers for that purpose; and if the party shall not forthwith pay it down, any such justice shall commit him to the house of correction or some other prison of the county, &c. or place in which he shall be apprehended, there to be kept to hard labour, for any time not exceeding one month, or until he shall pay the sum of money so forfeited.

Journeymen gaming.

By s. 16. Any justice of the county, &c. on complaint on oath of any such offence may issue his warrant for bringing before him or some other justice of the county, &c. the person charged: And if it shall appear on oath of one witness that any person within the jurisdiction of such justice can give material evidence on behalf of the prosecutor or offender, and who will not voluntarily appear before such justice to be examined concerning the premises, every such justice shall issue his summons to convene such person to be examined on oath touching the premises, and if he shall refuse to be examined, without just cause, such justice may commit him to the public prison of the place in which he shall be brought before such justice for (not exceeding) three months, as such justice shall direct; and if on such examination such justice shall deem the evidence material, he may bind the witness over, unless a *feme covert* by recognizance in

Justice's power.

in a reasonable penalty, to appear and give evidence at the next general or quarter sessions.

Witnesses.

By s. 18. Inhabitants of the parish may be witnesses.

Form of conviction.

By s. 19. The conviction to be drawn up in the form or to the effect following :

To wit. { *BE it remembered, that on this ——— day of ——— in the ——— year of his majesty's reign, A. B. is convicted before ——— of his majesty's justices of the peace for the said county of ——— or for the ——— riding or division of the said county of ——— or for the city, liberty, or town of (as the case shall happen to be) for ——— and the said ——— do adjudge him to pay and forfeit for the same the sum of ———. Given under ——— the day and year aforesaid.*

The justice to transmit the conviction drawn up, upon parchment to the next sessions ; and in case of appeal, the justices at the sessions, upon receiving the conviction so drawn up, are to proceed and hear and determine the same according to this act.

Certiorari.

By s. 20. No certiorari.

Appeal.

By s. 21. Any person thinking himself aggrieved by the judgment of any justice, before whom he shall have been convicted, may appeal to the next general or quarter sessions, and in such case the execution of the judgment shall be suspended, upon the person convicted entering before the convicting justice into a recognizance with two sureties in double the sum forfeited, conditioned to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at the said next sessions. And the said sessions shall hear and finally determine the matter, and award costs as they shall think just to be paid by either party, and if the appeal be affirmed, the appellant shall immediately pay the sum forfeited, together with such costs as shall be awarded, for defraying the defendant's expences, and in default thereof, shall suffer, as for non-payment of the forfeitures imposed by this act for non-payment of forfeitures upon conviction.

II. Of wagers.

Horse-racing is within the stat.

Or other game whatsoever] *M. 15 G. 2. Goodburn v. Marley.* It was objected in this case that in as much as a late statute 13 G. 2. c. 19. was made against horse-racing, that was an argument that horse-racing was not prohibited by any of the former laws, for if it were, this statute need not have been made, and therefore, it was said, it could not be within

within the statute 9 *An. c. 14*. But to this it was answered by the court, that though horse-racing might not be unlawful, yet betting at horse-races was so; and that the late act of parliament speaks only of running of horses or horse-racing, but speaks nothing of betting at horse-races which was the present case; and therefore that rule could not any ways affect the present case. It was determined therefore that *horse-races* are within these general words. 2 *Str.* 1159. So also in the cases of *Blaxton v. Pye*, *E. 6 G. 3.* 2 *Wilson*, 309. *Johnson v. Bann.* 4 *T. R.* 1. *Bidmead v. Gale.* 4 *Bur.* 2432.

And in the case of *Lynall v. Longbotham*, *M. 30 G. 2.* it was admitted on all hands that a *foot-race* also is within the statute, and that a footman running against time is a foot-race; but in this case, for a defect in the declaration the defendant had judgment. 2 *Wils.* 36. And also foot-racing.

In the case of *Clayton v. Jennings*, *E. 10 G. 3.* On an action for five guineas won by betting at a horse-race, it appeared that the bet was 10 guineas by the plaintiff, to five by the defendant. The plaintiff won, and obtained a verdict. It was moved in arrest of judgment, that there was no mutuality in the wager; for as by reason of the statute the defendant could not have recovered the 10 guineas, therefore the plaintiff shall not now recover the five. And of that opinion was the court. And *Ajlon J.* mentioned the case of *Connor v. Quick* in the king's bench about ten years before, when the court took a distinction between running a horse for 50l. which was lawful, and betting on the side of the horse which was not so. And in the present case, by the opinion of the whole court, judgment was arrested. 2 *Black. R.* 706.

See (*ante*) as to losing by betting, see 18 *G. 2. c. 34. ante*, and 9 *An. c. 14. ante*.

If any person shall play at cards, dice, tables, tennis, bowls, skittles, shovelboard, or any other pastime or game whatsoever, (other than for ready money,) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100l. at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same, in such case he shall not be bound to make it good, but the contract for the same and for every part thereof and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100l., half to the king, and half to him that shall sue in one year in any of the courts of record at *Westminster*, with treble costs. 16 *C. 2. c. 7. s. 3.*

Losing above
100l. at a time.

Relief may be
had in equity,

In the case of *Humphries v. Rigby*, M. 1698. A bill was brought, to be relieved against a bond for money won at all-fours. The plaintiff was a distiller, and the defendant a tapster at a bowling-green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, several times together, and it being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, although this case was not within the statute, the bond being for less than 100*l*. For equity always relieved before the statute, where any fraud appeared. 2 *Abt. Eq. Cas.* 184.

Securities to be
void.

All notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever, or by betting on the sides of such as do game, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such play to any person so gaming or betting, or that shall (during such play) so play or bet,—shall be void: And where such securities shall be of lands, or such as incumber or affect the same, they shall enure and be to the sole use and benefit of and devolve upon such person as might have such lands, in case the said grantor, or person so incumbering the same, had been dead; and all conveyances to hinder them from devolving on such person shall be void. 9 *An. c. 14. s. 1.*

T. 14 G. 2. *Bowyer v. Bampton*. Upon a case stated at *nisi prius* in an action by the plaintiff as indorsee of several promissory notes, it appeared that the notes were given by the defendant to one *Church* for money by him knowingly advanced to the defendant to game with at dice, and that *Church* indorsed them to the plaintiff for a full and valuable consideration, and that the plaintiff was not privy to nor had any notice that any part of the money for which the notes were given had been lent for the purpose of gaming. Upon this a question arose on the above stat. of 9 *An. c. 14.* whether the plaintiff could maintain this action, and the court were of opinion he could not; for it is making it of some use to the lender if he can pay his own debts with it, and will be a means to evade the act. And though it will be some inconvenience to an innocent man, yet that will not be a balance to those on the other side. And the plaintiff is not without remedy, for he may sue *Church* on his indorsement. 2 *Str.* 1155.

Securities] H. 19 G. 2. *Barjeau v. Walmfley*. The plaintiff and defendant gamed together, at tossing up for five guineas at a time. And the plaintiff having won all the defendant's

defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was insisted for the defendant, that by the 9 *An. c. 14.* the plaintiff could maintain no action; for by that act all *securities* for money lent to game with shall be void; and the borrowing on an agreement to pay is a *security*. But Lee Ch. J. held that this was not a case within the act, for there is not the word *contract*, as in the statute of usury; and the word *securities*, as it stands in this act, must mean lasting liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high, and therefore confined the act to written securities. Wherefore the plaintiff obtained a verdict for 126l. 2 *Str.* 1249.

In the case of *Rawden v. Shadwell*, Apr. 23, 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150l. for money lost at play, and might refund a sum of 150l. paid by the plaintiff in part of the said bond. It appeared that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkshire, the defendant won of the plaintiff in one evening the sum of 1150l. The plaintiff was under age; and being so, gave a bond for the money to the defendant; and afterwards, when of age paid 150l. in part. It was insisted for the plaintiff, that the securities by the statute of the 16 C. 2. were totally void, and ought to be delivered up; that the property of an infant in money lost at play is not altered, and therefore trover would lie; and the statute of the 9 *An.* was mentioned, and a case in 2 *Mod.* 9. For the defendant it was urged that the plaintiff on the same evening won of another in the same company, to wit, the surgeon of the regiment, a larger sum than the 1150l. which had been paid by him. That fair gaming is not *malum in se*. It is only prohibited *sub modo*. That the case cited was of money lost with false dice, which the court takes cognizance of as a cheat. That the statute of *An.* gives the court jurisdiction only as to a discovery. That as to the 150l. it was paid after he came of age; and if the court should order the defendant to refund at the distance of 14 years, it would occasion an infinite number of applications. That the statute of 16 C. 2. gives no remedy to recover money already paid. That there has been too long an acquiescence. That money paid, even in cases of bribery and corruption, cannot be recovered at law. That the statute of *An.* has directed an action within three months, for money lost and paid at play.—The Lord Chancellor said, the decree he should make was not founded on any impu-

imputation on the character of the defendant, who had put in a very candid answer. But this is a breach of the law, from a false principle of honour. And he was of opinion that the plaintiff was entitled to the whole relief prayed; that a party may come into this court to have a void security delivered up; that refunding the money is of course, as the statute has made the security void to all intents and purposes.

T. 11 G. 3. Earl of March v. Pigot. The cause was on a contract made at *Newmarket*. A wager was originally proposed between young Mr. *Pigot*, the defendant, and young Mr. *Codrington*, to run their fathers (to use the phrase of that place) each against the other. Sir *William Codrington*, the father of Mr. *Codrington*, was then a little turned of fifty; Mr. *Pigot*'s father was upwards of seventy. Lord *Offory* computed the chances, in the proportion of 500 to 1600 guineas, according to the ages of their respective fathers. Mr. *Codrington* thought the computation was made too much in his disfavour. Whereupon Lord *March* agreed to stand in Mr. *Codrington*'s place. And reciprocal notes were accordingly given between the Earl and Mr. *Pigot*. It happened, that at the time of this transaction, Mr. *Pigot*'s father was dead, unknown and unsuspected by any of the parties. He died in *Shropshire*, 150 miles from *London*, at two of the clock in the morning of the same day on which this bet was made at *Newmarket* after dinner. On the trial, the jury gave a verdict for the plaintiff, with 525l. damages. It was moved for a new trial. The objection was, That the contract was void, as being without any consideration. For there was no possibility of the defendant's winning, (his father being then actually dead,) and therefore he ought not to lose: It was a contract *in futuro*, manifestly made upon a supposition of a then future contingency. — By *Ld. Mansfield Ch. J.*: The question is, What the parties really meant? The material contingency was, Which of these two young heirs should first come to his father's estate? It was not known that the father of either of them was then dead. Their lives, their healths, were neither warranted nor excepted. It was equal to both of them, whether one of their fathers should be then sick or dead. All the circumstances shew, that if it had been then thought of, it would not have made any difference in the bet; and there was no reason to presume that they would have excepted it. The intention was, that he who first came to his estate should pay this sum of money to the other who stood in need of it. And the court unanimously discharged the rule for a new trial. 5 *Burr.* 2802.

Vaughan v. Whitcomb. E. 47 G. 3. Trover for a mare. The evidence was, that plaintiff having ridden to the house of the defendant on his own mare, proposed to the defendant to toss up for her against two horses of the defendant; they did toss up, the mare being then in the defendant's stable; the defendant won; the plaintiff said the mare was fairly won, and came away, leaving the mare in the defendant's possession, where she had remained ever since; her value being 25l. The action was not brought till more than three months after the tossing up. Verdict for the plaintiff, with liberty for the defendant to move to enter a nonsuit. In support of the verdict, it was said that tossing up was an illegal game within the 9 *An. c. 14.* and that, although the period was elapsed within which the plaintiff might recover under s. 2. of the act, yet he might still maintain the action, since the defendant could not prove any transfer of property to him, but by an act which amounts to a breach of an act of parliament. As to the illegality, they cited *Barjeau v. Walmsley*, 2 *Str.* 1249. And also (as shewing the extent of the words "other game whatsoever" of the statute.) *Goodburn v. Marley*, 2 *Str.* 1159. — *Blaxton v. Pye*, 2 *Wils.* 309. — *Clayton v. Jennings*, 2 *Bl.* 706. (horse-racing.) — *Lynall v. Longbottom*, 2 *Wils.* 36. (foot-racing.) — *Jefferys v. Walter*, 1 *Wils.* 220. (cricket.) — *Per Heath*]. There is no substantive clause in the act of parliament which avoids the contract. (*Alcinbrook v. Hall*, 2 *Wils.* 309.) It is only liable to be defeated *sub modo*; for which purpose, the plaintiff must bring his action within a limited time; and there is no doubt, on the act of parliament, but that the plaintiff is too late. — The other judges concurred, and the rule was made absolute for entering a nonsuit. 2 *New Rep.* 413.

Any two justices may cause to come or to be brought before them every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices that the principal part of his expences is not maintained by gaming, they shall require of him sufficient sureties for his good behaviour for twelve months, and in default of his finding such securities shall commit him to the common gaol until he shall find such securities as aforesaid. 9 *An. c. 14. s. 6.*

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20s.; such playing shall be deemed a forfeiture of the recognizance. s. 7.

A gaming contract is not void, but only voidable if action be brought in 3 months.

Persons suspected of supporting themselves by gaming.

Cheating.

If any person shall, by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, skittles, shovelboard, or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes or games; or by bearing a share in the stakes; or by betting on the sides of such as shall pay, act, ride, or run as aforesaid, — win any sum or other valuable thing; he shall forfeit treble the value, half to the king, and half to the party grieved, (if he shall sue in six months,) otherwise to any person who shall sue in one year next after the said six months, in any of the courts of record at *Westminster*, with treble costs. 16 C. 2. c. 7. s. 2.

And by the 9 *An. c.* 14. If any person shall by any fraud or shift, coufenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, or shall at any one sitting win of one or more persons above the value of 10*l.*, and shall be convicted thereof upon indictment or information; he shall forfeit five times the value of such money or other thing so won, and shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty shall be recovered by such person as shall sue for the same, by such action as aforesaid. s. 5.

T. 9 G. 2. R. v. Luckup. The defendant was convicted on an information upon this act, which says, that he shall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the prosecutor. — But by the court: All the judgment that we can give is, *that he is convicted*; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. In the case of recusancy, there is no other judgment. And the defendant was discharged, without any fine or costs. 2 *Str.* 1048.

Quarrelling.

And for the preventing such quarrels as may happen on the account of gaming, if any person shall assault and beat, or challenge or provoke to fight, any other person whatsoever on account of any money won by gaming, playing, or betting, at any the games aforesaid, he shall on conviction thereof by indictment or information forfeit to the king all his goods, chattels, and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years. 9 *An. c.* 19. s. 8.

It

It is generally provided by the several statutes that nothing therein shall hinder any person from playing at any the games aforesaid within any of the king's royal palaces, where he shall then reside. Royal palaces excepted.

III. *Of Lotteries.*

By the 10 & 11 W. c. 17. All lotteries are declared to be public nuisances; and all grants, patents, and licenses, for such lotteries, to be against law. *f. 1.* Lottery, a nuisance.

No person shall expose to be played, drawn, or thrown at, or shall publicly or privately exercise, keep open, shew, or expose to be played at, drawn or thrown at, or shall draw, play, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and every person who shall so exercise, expose, open, or shew to be played, drawn, or thrown at any such lottery, play, or device, shall forfeit 500l.; one third to the king, one third to the poor, and one third with double costs to him that shall inform and sue in the courts at *Westminster*; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. 10 & 11 W. c. 17. *f. 2.* Keeping or playing at a lottery.

And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20l. to be recovered in like manner. *f. 3.*

All justices of the peace, mayors, bailiffs, head officers, constables, and other civil officers shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and every person who shall set up, or shall by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100l.; one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster*. 9 An. c. 6. *f. 56.* Power of the justice.

Every person, who shall keep any office or place for making insurances on marriages, births, christenings, or service; or any other office or place under the denominations of sales, of gloves, of fans, of cards, of numbers, of the queen's picture, for the improvement of small sums of money, or the like offices or place, shall forfeit 500l.; one third to the king, one third to the poor, and one third with full costs to him who shall inform or sue. And every printer, or other person, who shall by writing or printing publish the setting up, or keeping any such office or place for such purpose, shall forfeit 100l. to be recovered and distributed in like manner. 10 An. c. 26. *f. 109.* Insurances.

Sales of lands or goods; and chances in public lotteries.

Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery; or by lots; tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery; or shall deliver out tickets to the persons advancing such sums to entitle them to a share of the money so advanced, according to any proposal or schemes; or shall make, print, or publish any proposal or scheme of the like nature, under any denomination whatsoever, — and shall be thereof convicted on oath of one witness by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500*l.*, one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices; and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500*l.* shall be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him who shall sue in the courts at *Westminster*. 8 *G. c. 2. s.* 36, 37.

By the 12 *G. 2. c.* 28. If any person shall erect, set up, continue, or keep any office, or place, under the denomination of a sale of houses, land, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers, or figures, cards, or dice; or shall make, print, advertise, or publish, or cause to be made, &c. proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some public lottery established by act of parliament, or shall deliver out tickets, or cause or procure to be delivered out to persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a
box

box or wheel, or by cards or dice, - or by any machine, engine, or device of chance of any kind whatsoever. shall on conviction by one justice, on oath of one witness or on view of such justice, forfeit 200*l.*, to be levied by distress and sale; which forfeiture, after deducting reasonable charges of the prosecution, shall be one third to the informer, and two thirds to the poor of the parish: but where the person convicted shall be in the city of *Bath*, then the two thirds shall go to the use of the poor residing within the hospital or infirmary erected for the benefit of poor persons resorting to the said city for the benefit of the mineral waters, after deducting the charges of conviction as aforesaid. *f. 1.*

And by 12 *G. 2. c. 28. f. 2.* The games of the ace of hearts, pharaoh, basket, and hazard, are declared to be games and lotteries by cards or dice within the meaning of the 10 & 11 *W. 3. c. 17. 9 Ann. c. 6. f. 56. 10 An. c. 26. f. 109. 9 G. 1. c. 19.* And every person who shall set up, maintain, or keep the said games, shall be liable to the forfeitures under this act, and prosecuted in like manner, and the penalties and forfeitures sued for in like manner.

By *f. 3.* Persons adventuring in any of the said games, lotteries, or sales, or who shall play, set at, stake, or punt at either of the said games of ace of hearts, pharaoh, basket, and hazard, shall on conviction forfeit 50*l.*, to be sued for and recovered as aforesaid.

And by 13 *G. 2. c. 19. f. 9.* Also the game of passage and every other game with one or more die or dice, or with any other instrument, engine, or device, in the nature of dice, having one or more figures or numbers thereon (backgammon and the other games now played within the backgammon tables only excepted), shall be deemed games or lotteries by dice within the said act of 12 *G. 2. c. 28.*

And every person who shall set up, maintain, or keep any office, table, or place for the game of passage, or any other such game as aforesaid (except as excepted), shall severally forfeit as in said 12 *G. 2. c. 28.*

Moreover, every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such persons as shall sue for the same in any court of record, or at the assizes. 12 *G. 2. c. 28. f. 4.*

And by 18 *G. 2. c. 34.* No person shall keep any house or place for playing, or permit any person within such house to play, at any prohibited game, with cards or dice, under the penalties of 12 *G. 2. c. 28. f. 1.* (See 18 *G. 2. c. 34. ante.*)

Keeping a gaming-house.

Power of the justices.

In case such offender have not sufficient goods and chattels whereon to levy the said penalties, or do not immediately pay or secure the same, he may be committed to the common gaol for any time not exceeding six months. *f. 1. 8.*

Appeal.

Persons aggrieved may appeal to the next sessions, giving reasonable notice to the prosecutor, and entering into recognizance before some (a) justices with two sureties to try such appeal at such sessions, and the matter shall be then finally heard and determined, and not afterwards; and in case such conviction or judgment be affirmed, the appellant shall pay treble costs: to be recovered as costs of suit may by any defendant in any other cases by law. *12 G. 2. c. 28. f. 5.*

Certiorari.

And no such conviction or judgment shall be set aside for want of form in case the facts be proven, nor be removable by *certiorari*, until judgment and determination be given and made at such sessions. *f. 6.*

Witnesses.

And any person may be summoned as a witness (other than the party accused) notwithstanding his having played, betted, or staked at any prohibited game; and in case he neglect to appear, or refuse to give evidence, he shall forfeit 50*l.* to be levied by distress by warrant of the justice issuing such summons; and for want of sufficient distress, he shall be committed to gaol for six months. *18 G. 2. c. 34. f. 4, 5. (See this ante.)*

Restrictions by 27 G. 3. c. 1.

But by 27 G. 3. c. 1. reciting the 8 G. 1. c. 2. *12 G. 2. c. 28.* and 22 G. 3. c. 47. No pecuniary penalty incurred by any person offending against such parts of the acts, as touch or concern *lotteries* shall be recovered or recoverable before justices of the peace; but may be sued for in the courts at *Westminster*, within six calendar months after the offence committed, half to the king, and half with costs to him who shall sue. *f. 1, 2.*

As touch or concern lotteries] In the case of *R. v. Liffon*, *T. 33 G. 3.* it was determined that the above statute only extends to *state lotteries*, and does not repeal the summary jurisdiction of magistrates over games of chance, or lotteries prohibited by *12 G. 2. c. 28.* *5 T. R. 338.*

Persons dealing in lottery tickets to be punished as rogues and vagabonds.

And moreover by 27 G. 3. c. 1. All persons who shall publicly or privately open, set up, continue, or keep, by himself, or any other, any office or place for buying, selling, or dealing in *Lottery Tickets*, or shares thereof, or for registering the numbers, without being licensed; or by himself or other person, or for his or their account, or for or on the account, or as the servant, or agent, or factor, of any other person, sell, or cause or procure to be sold, the chance

(a) The act says justices, but probably it meant justice.

of any such ticket, or any share thereof, for a day or part of a day, or less time than the whole time of drawing in such lottery then to come; or insure, or cause or procure to be insured, for or against the drawing of any such ticket; or shall receive any money or goods in consideration of any agreement or promise to repay any sum of money, or to deliver the same, or any plate, jewels, or other goods whatsoever, if any such ticket shall prove fortunate or unfortunate: or upon any other chance, event, or contingency relative or applicable to the drawing any such ticket, whether as to the time of their being drawn, or otherwise; *shall be deemed rogues and vagabonds* within the meaning of the 17 G. 2. c. 5. and shall be apprehended as by the said act of 17 G. 2. c. 5. and punished accordingly. And such offenders, (not having been sued for the same offence) on proof made of the offence as by the said act is directed, shall be by the justice before whom he shall have been conveyed sent to the house of correction until the next sessions; and the justices at such sessions shall examine the case, and proceed therein, as by the said act of 17 G. 2. is directed. And all justices, mayors, bailiffs, constables, and other his majesty's civil officers, are required to use their utmost endeavours to prevent the committing any of the offences aforesaid by all lawful means, and they shall be indemnified. *f. 3.*

But no person shall be liable to be prosecuted by action for the recovery of a pecuniary penalty, and by imprisonment as a rogue and vagabond. *f. 7.*

All powers, authorities, rules, directions, punishments, and provisions prescribed and inflicted by the said act of 17 G. 2., not hereby altered, shall be applied in carrying this act into execution, in relation to the persons hereby declared rogues and vagabonds. *f. 3.*

Insuring in the lottery is not gaming within stat. 5 G. 2. c. 30. *f. 12.* which will prevent a bankrupt's certificate being allowed. 1 H. Bl R. 29.

By 34 G. 3 c. 40. On complaint upon oath before one justice of any offence committed against the act of 27 G. 3. c. 1. for suppressing unlawful lotteries in any house or place within the jurisdiction of such justice, whereby any offenders may be liable to be punished as rogues and vagabonds, such justice, may by warrant, authorize and empower any person employed by the commissioners of the stamp duties in the execution of the acts for the regulating of lotteries, by day or by night, (but if in the night in the presence of a constable, who is required to be aiding and assisting therein,) to break open the doors or any part of such house or place where such offence shall have been com-

Doors may be broken open to seize such persons.

mitted; and to enter into the same and seize all such offenders, and all other persons who shall be discovered therein, and who shall have knowingly assisted, or been anyways concerned with such offender in committing such offence, and convey them before any justice of the county, city, or place wherein such person shall be so apprehended, to be dealt with according to law; and all persons who shall be discovered in such house or place, knowingly aiding, assisting, or any ways concerned with such offenders in carrying on any transactions respecting the said lotteries, contrary to the 27 G. 3. c. 1. shall be deemed rogues and vagabonds, and punished accordingly; and the officer having the execution of such warrant, and other persons acting in his aid or assistance, may stop, arrest, and detain every such person so discovered in such house or place, and convey them before such justice as aforesaid. And if any person shall forcibly obstruct, molest, or hinder any such officer, or others acting in his aid or assistance, in the due execution of their duty herein, he shall be deemed an offender against law and the publick peace; and the court before whom he shall be tried and convicted may order him to be fined, imprisoned, and publicly whipped as in their discretion shall be thought fit. And all persons, although not discovered in such house or place as aforesaid, who shall employ, or cause to be employed, any person in carrying on any of the transactions aforesaid, or in aiding or assisting therein, shall be deemed rogues and vagabonds, and punished accordingly. *f. 37.*

Offenders adjudged rogues and vagabonds may be committed.

If any person shall be brought before any two justices, and shall be convicted of any offence against the said act of 27 G. 3. c. 1. or of this act, whereby he shall be adjudged a rogue and vagabond, such justices may order him to be sent to the house of correction for any time not exceeding six nor less than one calendar month, and until the final period of the drawing of the lottery in respect whereof such offence shall be committed; and such proceedings shall not be subject to appeal, nor removable by *certiorari*. *f. 40.*

Little Goes.

By 42 G. 3. c. 119. All games or lotteries called *Little Goes* are declared to be publick nuisances. *f. 1.*

No person shall publicly or privately keep any office or place to exercise, keep open, shew, or expose to be played, drawn, or thrown at or in either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatever, any game or lottery called a *Little Goe*, or any other lottery whatever not authorized by parliament, or shall knowingly suffer to be exercised, &c. any such in his house, room, or place, on pain of forfeiting for every offence 500l.; to be recovered in the exchequer, at the

the suit of the attorney-general, to the use of his majesty.

2.

Provided that persons, not proceeded against for the penalty, shall be punishable as rogues and vagabonds within the said 17 G. 2. *s. 3.*

And upon information on oath before any justice of any offence committed against this act in any house or place within his jurisdiction, whereby the offender may be punishable as a rogue and vagabond, such justice may in his discretion by special warrant authorize any person by day or night (but if at night in the presence of a peace officer) to break open the doors or any part of such house or place and enter therein, and seize all such offenders, and other persons discovered therein, and who shall have knowingly assisted or been concerned with such offenders to be dealt with according to law as aforesaid; and all such persons so discovered assisting, &c. shall be punishable as rogues and vagabonds under the said 17 G. 2. And if any person shall forcibly obstruct, oppose, molest, or hinder any officer in the execution hereof, he shall be deemed an offender against the public peace, and may be fined, imprisoned, and publicly whipped, in the discretion of the court before whom he shall be tried. *s. 4.*

A magistrate may authorize persons to break open door, &c.

Penalty on obstructing officers.

And no person shall under any pretence, device, form, denomination or description whatever, promise or agree to pay any sum, or deliver any goods, or do or forbear to do any thing for the benefit of any persons, whether with or without consideration, on any event or contingency relative to the drawing of any ticket, lot, or number, in any such game or lottery, or publish any proposal for the purposes aforesaid, on pain of 100*l.* for each offence. *s. 5.*

No person shall agree to pay money, &c. on any chance, &c. on pain of 100*l.*

Offenders may be apprehended on the spot by any person whatever, and may be conveyed or sent before any magistrate or justice residing near, to be proceeded against under this act; and such magistrate or justice may proceed to examine the case, and on proof on oath or affirmation of any such offence may give judgment accordingly, and, if the party be convicted and do not immediately pay the penalty, may commit him to prison not exceeding six calendar months nor less than one month, without bail, and without appeal, or until such penalty be satisfied; such penalty to go one third to the king, one third to the informer, and the other third to the person apprehending or securing the offender. *s. 6.*

Offenders may be seized on the spot by any person, and taken to a justice, &c.

The provisions of 17 G. 3. c. 1. are extended hereto. *s. 7.*

If any person shall, by virtue or colour of any grant or authority from any foreign prince or state, set up, continue, or keep, or cause or procure to be set up, continued, or kept,

Foreign lotteries.

any lottery, or undertaking in the nature of a lottery, under any denomination whatsoever, or shall make. print, or publish, or cause, &c. any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery; and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall (over and above any penalties by former acts against unlawful lotteries) forfeit 200l., one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale, by warrant of such justices; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200l. be fully paid: Provided, that persons aggrieved may appeal to the next quarter sessions; whose judgment shall be final. 9 G. c. 19. s. 4, 5.

And by the 6 G. 2. c. 35. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number, or division in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery, or shall sell, procure or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive or cause to be received any money for any such ticket, receipt, chance, or number, or in consideration of any money to be paid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at *Westminster*, or on the oath or affirmation of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 200l., one third to the king, one third to the informer, and one third to the poor where the offence shall be committed; the same (in case of conviction before two justices) to be levied by distress and sale by warrant of such justices; and shall also be committed to the county goal for one year, and from thence till the 200l. be paid; provided, that persons aggrieved may appeal to the next quarter-sessions; and the judgment there to be final. s. 29, 30.

Gaols.

For breaking gaol. See Prison breaking.

Sect. I. *Building and repairing gaols.*

[22 & 23 C. 2. c. 20. — 11 & 12 W. c. 19. f. 1, 2, 4, 5.
— 12 G. 2. c. 29. f. 13. — 24 G. 2. c. 40. — 32 G. 2.
c. 28. — 13 G. 3. c. 58. — 14 G. 3. c. 20. — c. 59.
— 24 G. 3. f. 2. c. 54. f. 1 — 11. 14. 19. — c. 56.
f. 12. — 29 G. 3. c. 67. f. 1, 2, 3. — 31 G. 3. c. 46.
f. 6.]

II. *Who shall have the keeping of gaols.*

14 Ed. 3. ft. 1. c. 10. — 19 H. 7. c. 10. — 3 G. c. 15.
f. 1 c.]

III. *Gaoler shall receive criminals.*

[5 H. 4. c. 10. — 4 Ed. 3. c. 10. — 6 G. c. 19.

IV. *Selling strong liquors in gaols.*

[24 G. 2. c. 40. f. 13 — 16. — c. 54. f. 2. f. 22.]

V. *How prisoners may be set on work.*

[19 C. 2. c. 4. f. 1. — 12 G. 2. c. 29. — 31 G. 3. c. 46.
f. 12.]

VI. *How they shall be maintained.*

[14 El. c. 5. — 12 C. 2. c. 29. — 31 G. 3. c. 46.
f. 13.]

VII. *Regulations to be observed in gaols, and in the keeping and restraining of prisoners.*

[19 C. 2. c. 4. f. 2. — 22 & 23 C. 2. c. 20. f. 13. —
31 C. 2. c. 2. — 14 G. 3. c. 59. f. 1 — 3. — 31 G. 3.
c. 46. f. 5, 9, 14 — 16, 18, 19.]

VIII. *Gaolers to make returns.*

[31 G. 3. c. 46. f. 8, 9, 11]

IX. *Of clergymen to officiate in gaols.*

[13 G. 3. c. 5.]

X. *How prisoners shall be delivered.*

[3 H. 7. c. 3. — 14 G. 3. c. 20. — 32 G. 3. c. 45.]

XI. *Of gaolers permitting escapes.*XII. *Concerning debtors, as to arrest, and treatment thereupon.*

[32 G. 2. c. 28. f. 1 — 12.]

XIII. *Con-*

XIII. *Concerning houses of correction.*

[7 J. c. 4. f. 2. a. 6. 9. 11. — 14 G. 2. c. 33. f. 2. — 17 G. 2. c. 5. f. 3. — 13. — 22 G. 3. c. 64. f. 3. — 5. 7 — 10. 12, 13. — 24 G. 3. fess. 2. c. 55. f. 1 — 5. — 31 G. 3. c. 46. f. 1 — 5.]

XIV. *Concerning the prisons of the King's Bench and Marshalsea.*I. *Building and repairing gaols.*

In Pr. St. 32 Geo. 3. Ch. 8 - 1 Rec. Ch. 5-

THE justices, or the greater number of them, within the limits of their commission, upon presentment of the grand jury at the assizes (or sessions, 12 G. 2. c. 29. f. 13.) of the insufficiency or inconvenience of the county gaol, may contract with any person for the building, finishing, or repairing of the same. 11 & 12 W. c. 19. f. 1, 2. The expence thereof to be paid by the treasurer out of the general county rate. 12 G. 2. f. 29.

But this shall not extend to gaols held by inheritance; nor to charge any persons in any town or liberty which have common gaols for felons, and commissioners of assize or gaol delivery for any assessment to the making of the common gaol for the shire. 11 & 12 W. c. 19. f. 4, 5.

May be rebuilt
or enlarged by
order of sessions.

By the 24 G. 3. c. 54. fess. 2. The justices at their general quarter sessions, or the major part of them, such major part not being less than seven, upon presentment made by the grand jury at the assizes, great sessions, or general gaol delivery, of the insufficiency, inconveniency, or want of repair of the gaol, may contract for the building, rebuilding, repairing, or enlarging the same, and the yards, courts, and outlets thereof, and adding such other buildings, and making such conveniences, as shall be adjudged by them requisite, at a certain sum, payment, or allowance for the same; or for erecting any new gaol upon any scite or ground within any distance not exceeding two miles from the scite of the old gaol, and in that case for the selling the old gaol, and the scite thereof, and land thereunto belonging or any part thereof, and also the materials of the old gaol; the contractor giving security to the clerk of the peace for performance of the contract. / 1.

The said justices after such presentment made, shall at the next sessions give notice three times at least in some public paper circulating in or near such county, &c. or precinct of such presentment having been made, and of their intention to take the same into consideration at the next ensuing or some following sessions; and after such consideration, they

shall give notice in such paper of their intention of contracting as aforesaid; and of every matter or thing intended to be done in consequence of such presentment; and such contracts shall be at the most reasonable rate, and with the most responsible persons, and the contractor shall give security for due performance of his contract: and all contracts when made, and orders relating thereto, shall be entered in a book by the clerk of the peace, and kept by him to be inspected by the said justices, or any other person contributing to the rates of the county, &c. without fee. *f. 2.*

The said justices may build any new gaol in any part of the county, &c. in case (in the presentment made of the inconvenience of the old gaol,) it be expressly presented that the place wherein the old gaol is situate is improper, and that the said gaol ought to be removed to some other part of the county, &c.; and in case three fourths in number of the justices assembled at two successive quarter sessions (notice having been given three times at least in some public newspaper circulating as aforesaid of the time of the holding, and of the place to which such gaol is intended to be removed,) shall approve of such removal, but not otherwise. *f. 3.*

Justices may build a new gaol in any part of the county.

The said justices shall, as well in the choice of the ground, as in determining upon the plans as far as conveniently may be, pursue such measures as shall provide separate and distinct places of confinement with dry and airy cells, in which the several prisoners of the following descriptions respectively may be confined, as well by day as by night; namely, prisoners convicted of felony, prisoners committed on charge or suspicion of felony, prisoners committed for or adjudged to be guilty of misdemeanors only, and debtors; the males of each class to be separated from the females; and a separate place of confinement to be provided for such prisoners as are intended to be examined as witnesses on behalf of any prosecution of any indictment for felony. And also separate infirmaries, or sick wards, for the men and the women; and also a chapel; and convenient warm and cold baths or bathing tubs, and other things as directed by 14 G. 3. c. 59. and care to be taken that prisoners shall not be kept in any apartments underground. *f. 4.*

To be divided into separate apartments.

The said justices (after presentment made as aforesaid) may purchase any houses, buildings, lands, tenements, hereditaments, waters, and water-courses for building, enlarging, and accommodating such gaols, and direct the same to be conveyed to such person as they shall think fit, in trust for the purposes aforesaid; and such houses, buildings, lands, tenements, and hereditaments, when inclosed and added thereto, shall be deemed and taken to be a part of such gaol,

Justices may purchase houses or lands.

gaol, and to be part of such county, &c. town, liberty, or precinct where such gaol is situated. *f. 5.*

Justices are not to be interested in contracts.

No justice, who shall under the authority of this act do any thing in the execution thereof, shall be capable of having any beneficial interest or concern whatsoever, either in his own name or in the name of any other person in trust for him, in any contract or agreement to be made under the authority of this act; or shall for any design or plan he may deliver or produce, receive any benefit or emolument whatsoever. *f. 19.*

Accidental damages.

The justices at sessions may appoint one or more justices to visit and superintend the gaols, and make report of the state thereof to the court, who may, upon such report, order any sum not exceeding 200*l.* in any one year to be laid out upon the repairs thereof, notwithstanding such want of repair shall not have been presented by the grand jury. And if it shall happen that the gaol, by any breach being made in the same from attempts of prisoners to escape, or other accidents, shall be rendered unsafe for the custody of the prisoners therein confined, between the several times of holding the sessions, one justice may order the damage occasioned thereby to be immediately so far repaired as may be sufficient for the safe custody of the prisoners, and upon report thereof to the sessions they may order payment for the same. *f. 7.*

Prisoners may be removed to house of correction or other place of confinement whilst the gaol is repairing, &c.

When the justices at sessions shall think it necessary that the prisoners shall be removed for using the materials for building a new gaol, or repairing the old one, on giving sufficient notice to the sheriff, it shall be lawful for him to remove such prisoners to the house of correction, or such other place of confinement during the time of building or repairing, as the said justices, with the consent of such sheriff, shall approve of: And the expence of such removal, and the expence which may be incurred by the sheriff on account of the safe custody of such prisoners, shall be paid by the county, &c. &c., and such removal as aforesaid shall not be deemed or taken to be an escape. But this shall not extend to discharge any sheriff or gaoler from being answerable for the actual escape of any prisoner in his custody. *f. 6.*

Removal of prisoners to houses of correction.

And whereas there are several persons confined in county and city gaols under sentences and orders made by one or more justices at their sessions or otherwise, upon convictions in a summary way, without the intervention of a jury, it is enacted, that any judge of assize, or two justices of the peace within whose jurisdiction such gaol is situate, may remove such persons to any house of correction within the same jurisdiction, there to be confined and to remain in

execution

execution of such sentence or order. 24 G. 3. c. 56. *sess.* 2. *f.* 12.

The expence of building, rebuilding, repairing, enlarging, Expences.
or removing and fitting up such gaols, and such other necessary expences as aforesaid, shall be paid out of the county rate; and when the amount thereof shall exceed one half of the amount of the ordinary annual assessment for the county rate, (to be computed at a medium for the last five years preceding,) the justices in sessions may borrow on mortgage of the said rates any sums not less than 50*l.* nor more than 100*l.* each, at legal or lower interest as to them or the major part of them, such majority not being less than five, shall appear necessary, and they may secure such sums so borrowed upon the credit of the county, &c. rate: And they may agree with any person for the loan of such sums, and by their order establish such agreement. The agreement established by such order, signed by the chairman and two of the justices present, shall be effectual for securing the money borrowed to the lender, his executors, &c. copies of the same shall be kept by the clerk of the peace, the securities may be transferred. 24 G. 3. c. 50. *sess.* 2. *f.* 8, 9.

By *f.* 10. The said justices may also charge upon the rates the interest and a sum equal at least to the interest of the money borrowed, the said sums to be charged upon the county, &c. and assessed as the county rates are, and paid under direction of the justices in discharge of the interest, and of so many of the principal sums on the securities, as such money will discharge in each year, until the whole and the interest be discharged. The said justices to fix days of payment, and make orders for assessments in due time, and to appoint a person to keep account of all receipts and payment in books separate from other accounts, and to deliver the said books at the sessions; at which sessions the justices are to inspect the accounts and make orders for carrying this act into execution, and if it shall appear to them that the person so appointed, has neglected the order, and has not duly and without delay applied the money, he shall forfeit double the money not applied to the purposes of the act, and they are to direct in what order the securities are to be discharged, discharging first those which bear the highest interest.

By *f.* 11. the money borrowed under this act, to be repaid within 14 years.

If any, interested in any houses, &c. or lands which shall be deemed necessary for building or enlarging such gaols, shall upon notice in writing being given to them, or left at their usual place of abode, for 21 days next after notice refuse to treat or accept the price that shall be offered for the same, or shall otherwise not agree, the justices in sessions or Parties refusing
to treat.
any

any two of them appointed for that purpose, shall order the value thereof to be ascertained by a jury; and shall summon and examine witnesses upon oath, (to be administered by a justice,) and shall order the sum so ascertained to be paid; and the verdict of such jury shall be filed at the sessions, and shall be final and conclusive against all persons whatsoever. *f. 14.*

f. 15. relates to the summoning of the jury; *f. 16.* to the costs of the jury.

Regulations in
24 G. 3. to be
conformed to.

And by 31 G. 3. c. 46. the rules, orders, and regulations, for the separation and classing of prisoners, and the securing just and humane treatment by gaolers, directed by 24 G. 3. c. 54. and all other directions contained in the said act, shall be exactly conformed to. *f. 6.*

Gaolers to deli-
ver a certificate
at the Michael-
mas sessions
yearly.

By 29 G. 3. c. 67. Every gaoler shall at the *Michaelmas* sessions yearly deliver a certificate (A) signed and verified on oath, either before such court, or in case of sickness, inability, or other cause, he is unable to attend then before a justice; which certificate shall express after each of the provisions therein enumerated, whether such provision is or is not complied with or observed within such gaol; and such certificate shall be read publicly in open court in the presence of the grand jury, and entered on the records of the sessions. *f. 1.*

And such sessions shall thereupon take the said certificate into their consideration, and may summon any person named therein to appear before them; and shall give such directions, and make such orders relating thereto as to them shall seem meet; and may take security from any person concerned for his due performance. *f. 2.*

And every gaoler or other officer having the care or superintendence of any gaol being a county gaol, who shall neglect to deliver such certificate, shall forfeit 50l.; if not a county gaol, 20l.; to be recovered in the courts at *Westminster*. *f. 3.*

(A) Form of the certificate.

Westmorland, { *AT the general quarter sessions of the peace*
to wit. { *for the said ——— holden at ———*
this ——— day of ——— in the year of our Lord ——— the
certificate of ——— in pursuance of the statute in this case made
and provided, respecting the gaol of ———.

22 & 23 C. 2. c. 23. enacts, That felons and debtors shall be kept separate, under penalties upon the sheriff or gaoler.

24 G. 2. c. 40. enacts, that

1. No gaoler shall sell, lend, use, give away, or suffer, spirituous liquors within any gaol, under a penalty.
2. Copy of the clause last mentioned, as also of two other clauses respecting the same, shall be hung up in the gaol, under a penalty.

32 G. 2. c. 28. enacts, that

The clerk of the peace shall cause a list of the fees payable by debtors, and the rules and orders for the government of gaols and prisons, to be hung up in the court where the assizes or sessions shall be held, and send another copy to the gaoler; and the gaoler shall cause the same to be hung up in a conspicuous place in the said gaol.

13 G. 3. c. 58. enacts, that

Clergymen may be provided to officiate in gaols.

14 G. 3. c. 20. enacts, that

Persons acquitted or discharged upon proclamation for want of prosecution, shall be discharged immediately in open court, and without fee.

14 G. 3. c. 59. enacts, that

1. The walls and ceilings of cells in gaols shall be scraped and whitewashed once in the year at least.
2. That the cells shall be kept clean; and
3. That they shall be supplied with fresh air, by ventilators or otherwise.
4. That there shall be two rooms set apart for the sick.
5. That a warm and cold bath, or bathing tubs, shall be provided.
6. That this act shall be hung up in the gaol.
7. That a surgeon or apothecary shall be appointed with a salary.

II. *Who shall have the keeping of gaols.*

The gaol itself is the king's, but the keeping thereof is incident to the office of the sheriff, and inseparable from it, except such gaols whereof any persons have the keeping by inheritance or succession. 14 Ed. 3. *ff.* 1. c. 10. 19 H. 7. c. 10. 2 *Inft.* 589.

And therefore the sheriffs shall put in such keepers for whom they will answer. 14 Ed. 3. *ff.* 1. c. 10.

But by the 3 G. c. 15. *ff.* 10. None shall buy the office of gaoler, on pain of 50*l.*; half to the king, and half to him that shall sue.

A gaoler in fact is as much punishable for a misdemeanor in his office, as if he were a rightful gaoler. 2 *Harv.* c. 19. *ff.* 23.

When a sheriff quits his office, the custody of the county gaol can only belong to his successor. 1 *L. Raym.* 136.

III. *Gaoler*

III. *Gaoler shall receive criminals.*

Gaoler to receive felons.

All felons shall be imprisoned in the common gaol, and not elsewhere. 5 H. 4. c. 10.

And if the gaoler refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of goal delivery. 4 Ed. 3. c. 10. Dalt. c. 170.

Criminals for small offences may be sent to the gaol or house of correction.

But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

IV. *Selling ale, wine, or other strong liquors in gaols.*

See Pr. St. 321c. Ch. 14.

By the 24 G. 2. c. 40. No license shall be granted for retailing *spirituous liquors* within any gaol, prison, or house of correction; and if the gaoler, keeper, or officer thereof shall sell, lend, use, or give away, or suffer the same, or to be brought into the same, except prescribed by a regular physician, surgeon, or apothecary, and to be applied in pursuance thereof, he shall forfeit 100l., half to the king, and half with full costs to him who shall sue, and for a second offence shall forfeit his office. s. 13.

Any justice, on information on oath that spirituous liquors are kept or disposed of in such gaol, &c. may enter and search, or issue his warrant to enter and search for, and seize, and take, and destroy the same. s. 14.

If any person shall carry or bring, or endeavour to carry or bring, any spirituous liquors (except as before excepted) into such gaol, the gaoler or his servants may apprehend and carry him before a justice; and if by the oath of one witness or otherwise such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine, not exceeding 20l. and not less than 10l., as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol. s. 15.

A copy of the three clauses above shall be hung up in one of the most public places of the gaol, &c. and renew the same from time to time, so that it may always be kept fair and legible; on pain of the gaoler forfeiting 40s. for every wilful default to be levied by warrant of one justice, on conviction on the oath of one witness; every justice within his jurisdiction may enter and demand a sight of such copy; and if not shewn to him so hung up as aforesaid, he shall immediately convict such gaoler, keeper, master or officer; one

one half of the said penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of such gaol, &c. *f. 16.*

By the 24 G. 3. c. 54. *sess. 2.* No gaoler nor any person in trust for or employed by him shall suffer tipling or gaming in such prison; or shall sell or dispose of or permit to be sold or disposed of or be capable of being licensed to sell or dispose of any wine, beer, ale, or other liquors; or have any beneficial interest or concern whatsoever in the sale or disposal of any liquors of any kind; or in any tap-house, tap-room, or tap, on pain of forfeiting 10*l.* for every such offence; to be recovered by distress and sale, by warrant of two justices, upon confession of the party, or upon the information on oath of one witness, which penalty, after the charges of recovering the same shall have been deducted, shall be distributed, half to the informer, and half to the prisoners confined in such gaol; and for want of sufficient distress, the offender to be committed to the house of correction for the county or place for any time not exceeding three months, unless such penalty with reasonable charges shall be sooner paid. *f. 22.*

Gaolers are not to be licensed.

And the conviction may be in the following form or to the like effect;

County of } *BE it remembered, That on the ——— of*
——— in the ——— year of the reign
of his majesty ——— A. O. is convicted before ——— of his
majesty's justices of the peace for the said county [or riding, divi-
sion, city, town, liberty, or precinct, as the case shall be] by
virtue of an act of parliament made in the 24th year of the reign
of his majesty king George the third, intituled, [here set forth
the title of the act, and offence, and the time when, and
place where committed.] Given, &c. f. 23.

And the said justices in their sessions, or at any special adjournment thereof held for such express purpose, may, if it shall appear to them necessary or proper, appoint salaries or allowances to gaolers and their assistants, and vary the same from time to time, in lieu of the profits which were before derived from the sale of liquors, as to them shall seem meet, and order the same to be paid out of the county rate, by a certificate specifying the salary and allowance to be made being signed by the chairman of the sessions: But no chairman shall sign such certificate, unless such salaries or allowances shall have been settled at some general quarter sessions, or some special adjournment thereof, and notice of such intended application, signed by the clerk of the peace, hath been given 14 days at least before the holding of such sessions or adjournment thereof, by two several advertise-

Justices may allow salaries to gaolers.

ments, in some newspaper printed and circulated in such county, &c. or precinct where such gaols are, which said advertisements shall be signed by the clerk of the peace or his deputy. *f.* 20, 21.

V. *How prisoners may be set on work.*

The justices in their general sessions, if they find it needful, may provide a stock of such materials as they find convenient for setting poor prisoners on work, in such manner as other county charges may, and be paid for by the treasurer out of the general county rate; and may pay and provide fit persons to oversee and set such prisoners on work; and make such orders for accounts concerning the premises as shall be thought needful, and for punishment of neglects and other abuses, and for bestowing the profit arising by the labour of the prisoners for their relief. Provided that no parish be rated above 6d. by the week towards the premises, having respect to the respective values of the parishes. 19 C. 2. c. 4. *f.* 1. 12 G. 2. c. 29.

And by 31 G. 3. c. 46. after reciting that it is fit the provisions in the said act 19 C. 2. c. 4. should be executed, and that the same should also be extended to all prisoners inclined to take the benefit thereof, or who are inclined and willing to work, and also to increase the sum therein limited for defraying the expences of executing the same, *it is enacted*, that the justices in sessions may direct the payment of such sums of money out of the county-rate as they shall think fit in executing the provisions of the said act according to the extension thereof hereby made. *f.* 12.

VI. *How they shall be maintained.*

By 14 El. c. 5. & 12 C. 2. c. 29. Prisoners are to be provided for by a sum to be paid out of the general county rate, by the high constables, to such sufficient persons dwelling nigh the gaols, as shall be appointed by the justices in open sessions, who shall be there ready to receive it.

And by 31 G. 3. c. 46. the justices in sessions may order such sums as they shall think necessary to be paid out of the county rate towards assisting such prisoners as are not able to work, or being able cannot procure employment sufficient to sustain themselves by their industry in food and raiment, and are not otherwise provided for by law, or statute, or custom, or order, as the justices shall think necessary for the support of health. *f.* 13. See 52 G. 3. c. 160. *post.* 663.

VII. Regulations to be observed in gaols, and in the keeping and restraining of prisoners.

The county gaol is the prison for malefactors; but prisoners for debt, where escape lies against the sheriff for their escaping, may be kept in what place the sheriff pleases.

Where prisoners shall be kept.

1 L. Raym. 136.

By the 31 C. 2. c. 2. If any person shall be committed to any prison for any criminal or supposed criminal matter, he shall not be removed from thence, unless it be by *habeas corpus* or some other legal writ, or where he is removed from one prison or place to another within the same county, in order to his trial or discharge, or in case of sudden fire or infection, or other necessity; on pain that the person making out and signing or countersigning any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100l. and for the second 200l. to the party grieved, by action of debt, bill, plaint, or information, in the king's courts at *Westminster*. *f. 9.*

When only to be removed.

But on emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, (1 Q.) may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols. 19 C. 2. c. 4. *f. 2.*

By the 22 & 23 C. 2. c. 20. The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. *f. 13.*

Debtors and felons to be kept separate.

And by 31 G. 3. c. 46. As long as any person under sentence of transportation shall continue in the common gaol, the gaoler shall separate such convict, as far as conveniently may be, from every person in his custody except prisoners convicted of felony. *f. 10.*

Transports to be kept separate from other prisoners.

It seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution; or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and close, without conference with others or intelligence of things abroad. *Dalt. c. 170.*

To be kept in close custody.

Therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though he come again, yet these are escapes. *Id.*

May be ironed.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. 1 *H. H.* 601. *Dalt. c.* 170.

And it is said, that a gaoler is no way punishable for keeping even a debtor in irons. 2 *Haw. c.* 22. *f.* 32.

But the learned editor of *Hale's History* observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbidden to put their prisoners to any pain or torment. And *L. Coke*, 2 *Inst.* 381. is express that by the common law it might not be done. 1 *H. H.* 601.

Prisoner dying
in gaol.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law: And this is the cause, that if a prisoner die in gaol, the coroner ought to sit upon him; and if the death were owing to cruel and oppressive usage on the part of the gaoler or any officer of his, it would be deemed wilful murder in the person guilty of such duties. 3 *Inst.* 91. *Fost.* 321, 322.

Prisoner or
gaoler being
killed

But if a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw. c.* 28. *f.* 13. 1 *H. H.* 496. For gaolers and their officers are under the same special protection that other ministers of justice are. And therefore, if in the necessary discharge of their duty they meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, they are not obliged to retreat as far as they can with safety, but may freely and without retreating repel force with force; and if the party so resisting happeneth to be killed, this, on the part of the gaoler or his officer, or any person coming in aid of him, will be justifiable homicide. On the other hand, if the gaoler or his officer or any person coming in aid of him should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance; it is homicide committed in defiance of the justice of the kingdom. *Fost.* 321.

Regulations to
be observed for
keeping prisons
clean.

But forasmuch as the gaol is intended, in most cases, for custody and not for punishment, and confinement itself in such dismal abodes is sufficiently afflictive and disconsolate, human nature will plead for those miserable objects, that their condition be rendered as tolerable as the case will admit of; particularly with regard to cleanliness, which is

the parent of health; and wholesome air, which is life itself. In conformity with these humane sentiments, the following regulations were established by the 14 G. 3. c. 59. ^{14 G. 3. c. 59.} Whereas the malignant fever, commonly called the gaol distemper, is found to be owing to want of cleanliness and fresh ^{Pr. 11th Ch. 5} air in the several gaols, the fatal consequences whereof * might be prevented, if the justices of the peace were duly authorized to provide such accommodations in gaols as might be necessary to answer this salutary purpose, it is therefore enacted, that the justices, in their several quarter sessions, shall order the walls and ceiling of the several cells and wards, both of the debtors and felons, and also of any other rooms used by the prisoners in their respective gaols where felons are usually confined, to be scraped and whitewashed once in the year at least; and to be regularly washed and kept clean, and constantly supplied with fresh air by hand ventilators or otherwise; and shall order two rooms in each gaol, one for the men, and the other for the women, to be set apart for the sick prisoners, directing them to be removed into such rooms as soon as they shall be seized with any disorder, and kept separate from those who shall be in health; and shall order a warm and cold bath or commodious bathing tubs to be provided in each gaol, and direct the prisoners to be washed in such warm or cold baths or bathing tubs, according to the condition in which they shall be at the time, before they are suffered to go out of the gaol upon any occasion whatsoever. And they shall order this act to be painted in large and legible characters upon a board, and hung up in some conspicuous part of the gaol. And they shall also appoint an experienced surgeon or apothecary at a stated salary to attend the gaol; who shall report to the justices, at each quarter sessions, a state of the health of the prisoners under his care. *f. 1.*

And they shall have power, in their said quarter sessions, to order clothes to be provided for the prisoners when they see occasion; and to prevent the prisoners from being kept under ground, whenever they can do it conveniently; and to make such other orders, from time to time, for restoring or preserving the health of prisoners as they shall think necessary: and also to direct the several courts of justice within their respective jurisdictions to be properly ventilated. *f. 2.*

* These fatal consequences were sufficiently felt at the Old Bailey sessions in 1750, of which Mr. Justice *Foster* has given an account. *Fest. 74.*

The expences attending the execution hereof, so far as the same shall respect county gaols and prisons, and courts of justice belonging to counties, shall be paid out of the county rates; and so far as they respect the gaols and courts of justice of particular cities, franchises, or places, that do not contribute to the county rate, shall be paid out of the public stock of such city, franchise, or place. *f. 3.*

And if the gaoler shall neglect or disobey the orders of the justices in this behalf, he may be proceeded against in a summary way, by complaint to the judges of assize, or to the justices in their quarter sessions; and if he be found guilty, he shall pay such fine as they shall impose, and be committed in case of non-payment. *Id.* [It is not specified to what place, nor for what time.*]

Visiting justices
to be appointed.
31 G. 3. c. 46.

By 31 G. 3. c. 46. For the better preventing abuses in gaols, the justices shall at every sessions after the passing of this act, appoint two or more justices visitors of every such gaol, who shall either together or singly personally visit and inspect such gaol at least three times in each quarter of a year, and oftener if occasion shall require; and shall examine into the state of the buildings, the behaviour and conduct of the officers, and the treatment and condition of the prisoners and the amount of their earnings, and the expences attending such prison; and in matters of pressing necessity, and within the powers of their commission as justices, shall take cognizance thereon, and proceed to regulate and redress the same; and at every sessions the said visiting justices respectively shall make a report in writing of the state and condition thereof, and of all abuses which may occur to their observation therein; and the chairman of such sessions shall call upon the said visitors for such report. And every justice of his own accord, and without being appointed a visitor, may enter into and examine the same at such time and as often as he shall think fit, and if he shall discover any abuse therein, he shall report the same in writing to the next sessions or adjournment; and when any abuses shall be reported in manner aforesaid, the same shall be taken into immediate consideration at the quarter or adjourned sessions, and such effectual measures shall be adopted for inquiring into and rectifying the same as soon as the nature of the case will allow. *f. 5.*

Any other justice
may examine
gaols.

* These salutary provisions are owing in a great measure to the suggestions of the late *John Howard*, esq. of *Bedford*, a gentleman whose name ought to be for ever remembered with honour in the annals of this kingdom, and whose character is so well known and revered as to need no encomiums here.

If such visitors shall observe or be satisfactorily informed of any extraordinary diligence or merit in any offender, they shall report the same to the judges at the next assizes, in order that they may if they think proper recommend such offender to the royal mercy, and if his majesty shall shorten the time of confinement of such offender, he shall together with necessary cloathing receive such sum for his immediate subsistence as the said visiting justices shall think proper, not exceeding 20s. nor less than 5s., in case he have been confined for one year, and so in proportion for any shorter term; such sum, as also the expence of such clothing, shall be paid out of the county rate. *f. 14.*

Extraordinary
diligence or me-
rit in offenders.

The justices in sessions or special adjournment thereof shall within 12 months after the passing of this act regulate and settle a table of fees and rates to be taken by gaolers; and the said justices so assembled may from time to time alter, vary, or totally disallow of all or any such charges and fees; and shall order a copy thereof so regulated to be hung up in the court of assize and quarter sessions, and another copy thereof to be sent to the gaoler, who shall cause the same to be hung up in some conspicuous place within the gaol; and all orders and directions contained in the said act of 32 G. 2. respecting the table of fees to be taken by gaolers shall be conformed to as if the same were herein particularly enacted and repeated. *f. 15.*

A table of fees
to be settled.

And by way of recompence for any diminution of emolument in the office of gaoler by means of any such regulation of fees, or by the disallowing of any such charges on the county rate, or in lieu of the profits and emoluments that have usually arisen from the office of gaoler, the said justices so assembled may grant such salaries and allowances to such gaoler and his assistants as to them shall seem reasonable; and from time to time may alter and vary the same as they shall think fit, which shall be paid out of the county rate, upon an order signed by the chairman of such sessions, specifying such salary and allowance: Provided always, that no such regulation which may in any wise affect the sheriff or his officers shall have effect pending the continuance in office of the sheriff who shall be actually in commission at the time of making such regulation, unless he shall, by writing under his hand, consent thereto; and such justices in granting to any gaoler any such salary or allowance may stipulate as a condition of the payment thereof, that he do regularly observe and keep the rules and orders of the gaol. *f. 15.*

Salaries may be
granted where
emoluments are
diminished.

Sheriff to be
consenting.

Justices may
stipulate with
gaolers.

But no such salary and allowance shall be paid out of such county rate to any woman, or other person incapable of executing

Women, &c.
are not to have
such allowance.

executing the office in person, who may at any time be appointed a gaoler. *Id.*

Penalties.

All fines, forfeitures, and penalties inflicted by this act, the recovering and application whereof is not particularly herein directed, shall be levied by distress and sale, by warrant of two justices, who may hear and determine the same; and when recovered, shall be paid to the treasurer of the county or division, and applied to the purposes of this act. And for want of sufficient distress, the offender shall be committed to prison for any time not exceeding three nor less than one calendar month, as such justices shall think proper. *f. 16.*

And the conviction may be in the following form :

Conviction.

Be it remembered, that on ——— in the year of our Lord ——— A. C. is convicted before me J. P. one of his majesty's justices of the peace for the county of ——— [here set forth the offence,] Given, &c. f. 17.

Appeal.

If any person shall think himself aggrieved (where no particular method of relief is appointed) he may appeal to the sessions within four calendar months after the cause of complaint shall have arisen, first giving seven clear days' notice at least in writing of his intent, and the matter thereof to the justice or justices who convicted him, and to the clerk of the peace; and within two days after such notice, he shall enter into recognizance before some justice, with two sureties to try such appeal and to abide the order of and pay such costs as shall be awarded at such sessions, who, upon due proof of such notice having been given, and recognizance, shall hear and finally determine such appeal in a summary way, and award such costs to either party as they shall think proper, which determination shall be final to all intents and purposes. *f. 18.*

Proceedings not to be quashed for want of form.

No proceedings herein or touching such conviction shall be quashed for want of form, or removed by *certiorari*. (Here follows a provision relative to making a distress.)

VIII. *Gaolers to make returns.*

Returns to be made of the size and condition of gaols.

The keeper of every gaol shall the first day of every assize make a return in writing to the clerk of assize or other proper officer, and shall specify therein the number and size of the cells, completed for prisoners ordered to imprisonment and hard labour, the names of the prisoners, and the offences of which they have been guilty; the court before which each person was convicted, and the sentence of the court if tried and convicted before any court of record, or if committed.

mitted by a justice of the peace, then the name of such justice and the offence of which he was convicted, the age, bodily estate, and behaviour, of every such convict. 31 G. 3. c. 46. s. 8.

Every such return before it is delivered into court shall be examined by one of the visiting justices to be appointed as aforesaid, who shall sign such return, and annex thereunto such observations as he shall think fit, on every particular therein contained. s. 9.

To be examined by a justice.

And in case the gaol shall not be in a state to afford the means of separation as directed by 24 G. 3. c. 54., the gaoler shall report the insufficiency thereof to the grand jury at every assizes till such means of separation are effected. s. 11.

Gaolers to report the insufficiency of gaols.

IX. *Of clergymen to officiate in gaols.*

The justices in sessions may appoint a clergyman to officiate in gaols, according to the rites of the church of England, and allow to each a salary not exceeding 50l. a-year; to be paid by the treasurer out of the county rate. 13 G. 3. c. 58.

X. *How prisoners shall be delivered.*

By the 3 H. 7. c. 3. Those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge; on pain of 5l.

Names of prisoners to be delivered.

If a gaoler detain a prisoner in gaol after his acquittal unless it be for his fees, (not for meat, drink, or lodging,) this is an unlawful imprisonment. 2 Inst. 53.

What fees to be taken of prisoners acquitted.

And a gaoler must not disobey a writ of *habeas corpus*, for want of his fees, but the court will not turn the prisoner over till the gaoler be paid all his fees. 2 Haw. c. 22. s. 31.

But by the 14 G. 3. c. 20. If the prisoner is acquitted, or discharged upon proclamation for want of prosecution, or hath no bill found against him, he shall pay no fee to the gaoler for his discharge; but such fee as hath been usual, not exceeding 13s. 4d., shall on certificate of a judge or justice before whom such prisoner shall have been discharged, be paid out of the general county rate.

And by 32 G. 3. c. 45. Any judge of assize, or justices in sessions, or justice of the peace, may order any convict upon his discharge from prison; and also any person who shall be acquitted at the assizes, or sessions, or discharged by proclamation or otherwise, to be conveyed by a vagrant pass as directed by 17 G. 2. c. 5., who shall by himself or any other person apply to such court or justice to be so conveyed;

Prisoners discharged may be conveyed by a vagrant pass.

veyed; and the judge, justices, or justice aforesaid, shall certify in such pass, that the person so conveyed was discharged from prison, or acquitted, or otherwise discharged at the assizes or sessions, as the case may be, for which pass no fee shall be paid. *f. 4.*

XI. Of gaolers permitting escapes.

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. *2 Haw. c. 19. f. 22. & seq. 5 Mod. 415, 416.*

But the principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. *2 Haw. c. 19. f. 27.*

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. *Id. f. 29.*

XII. Concerning debtors.

Arresting and
carrying to gaol.

By the 32 G. 2. c. 28. No sheriff, under sheriff, bailiff, or other officer shall carry any person by him arrested or being in his custody by virtue of any writ or other process, to any tavern, alehouse, or other public victualling or drinking house, or to the private house of any such officer, or of any tenant or relation of his without his free and voluntary consent; nor charge him for wine, beer, ale, victuals, tobacco, or other liquor or thing whatsoever, but what he shall freely call for of his own accord; nor cause or procure him to call or pay for any such, but what he shall call for voluntarily; nor demand, take, or receive, directly or indirectly, any other or greater sum than is by law allowed; nor take any reward, gratuity, or money, for keeping him so arrested out of gaol; nor carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling-house of his own appointment within some city, borough, corporation, or market-town, (if there arrested,) otherwise within 3 miles from the place of arrest,

so as such dwelling-house be not the house of the person arrested, and be within the respective division or liberty.

f. 1.

No sheriff, &c. or other officer shall take more for one or more night's lodging, or for a day's diet, or other expences of any person under arrest, than shall be allowed by order of sessions. Which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions house or other proper place, that the same may be there seen and examined. *f. 2.*

And every sheriff, and other person intrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be employed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will shew and deliver a copy of the said clauses to every person he shall arrest and go with to any public or other house where any liquor shall be sold, and that he will permit every person so arrested, or any friend of his to read over the same clauses before any liquor, meat, or victuals shall be there called for or brought to such person so under arrest: And if any bailiff shall offend in the premises, he shall besides the breach of the condition of the bond be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act. *f. 3.*

The sheriffs and gaolers shall suffer any prisoner for debt, damages, costs, or contempt, at his will and pleasure, to send for or to have brought unto him at reasonable times in the day any beer, ale, victuals, or other necessary food, from what place he shall think fit, or can have the same; and also to have and use such bedding, linen, and other necessities as he shall have occasion for and think fit, or shall be supplied with, without purloining or detaining the same, or requiring him to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him in relation thereunto. *f. 4.*

Gaoler to suffer the prisoners to send for necessities.

The two lords chief justices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in respect of the prisons within the said city, and the said lords chief justices and chief baron, or two of them, together with three justices of the peace of Middlesex and Surrey respectively, for the prisons within the said counties; and

Justices to establish tables of fees, and rules and orders for the regulation of gaols.

*Pr. Sec. ch. 5
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else-

elsewhere, the justices in sessions, shall establish tables of the rates and fees to be taken by gaolers within their respective jurisdiction, and vary the same from time to time as they shall see occasion. The same to be signed respectively by the said judges, mayor, aldermen, and justices within *London*, *Middlesex*, and *Surrey*; and elsewhere to be signed by three or more justices in sessions, and afterwards reviewed and confirmed or moderated by the judges of assize (or justices of great sessions in *Wales* and *Cheshire*) at the next assizes to be held after making or varying the same as aforesaid; the same to be afterwards signed by the said judges of assize and three justices of the peace of such division or place respectively. *f. 5.*

But in the case of *Boldero* and others v. *Mosse* and others, *M. 30 G. 3.* it was determined that justices in sessions have no authority to fix bailiff's fees for arrest, nor will the court of B. R. allow more than the usual fee, although more be in fact paid, in compliance with a table of fees settled at the sessions, and which has been acted upon for many years. *3 T. R. 417.*

And proper rules and orders, for the better government of the respective gaols and prisoners therein, shall be made and altered from time to time as there shall be occasion, by the courts of *Westminster-hall* for the several prisons belonging to the said courts; and by the said lords chief justices and chief baron, or two of them, together with the mayor of *London* and two aldermen, or with three aldermen without the mayor, for the prisons within the said city; and by the said lords chief justices and chief baron, or two of them, together with three justices of the peace, for the prisons within *Middlesex* and *Surrey*; and elsewhere, by three or more justices in sessions, for the prisons within their respective districts; the same to be afterwards reviewed, and altered if thought necessary, by the judges of assize at the next assizes after making or altering the same; and after every making, enlarging, altering, or amending as aforesaid, the same shall be signed by the said several persons authorized to make, review, or alter the same. *32 G. 2. c. 28. f. 6.*

And duplicates of every such table of fees and of orders which shall be made for the prisons belonging to the courts of *Westminster-hall* shall be inrolled in such court; and for any other prisons, shall be transmitted to the clerk of the peace, to be inrolled by him, without fee; and every such clerk of the peace shall cause another copy thereof to be hung up in the court where the assizes or quarter sessions shall be held, there to remain and be inspected; and shall
cause

cause another copy thereof to be transmitted to the gaoler; and such gaoler shall forthwith cause the same to be hung up in some open place and in a conspicuous manner in his gaol; and to be there kept up, so as that the prisoners may have free resort thereto at seasonable times in the day, without paying any thing for the same. *Id.*

The courts of *Westminster-hall* shall, in every *Michaelmas* term, appoint some day to inquire whether such tables of fees and such rules or orders are there hung up in the several prisons to them belonging, and duly complied with; and the judges of assize shall make like inquiry, and shall supply and redress whatever they shall find neglected or transgressed relating thereunto; and shall expressly give in charge to the grand jury to make inquiries thereof. *f. 7, 8.*

No gaoler shall take, directly or indirectly, of any prisoner for debt, damages, costs, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, release or discharge, than shall be allowed in the said table of fees; and every sheriff, gaoler, or other officer, who shall in anywise offend against this act, shall for every such offence (over and above such other penalties or punishments as he shall be liable to by the laws now in force) forfeit to the party grieved 50*l.* with treble costs. *f. 12.*

The courts at *Westminster*, justices of assize (and great sessions,) justices of the peace, and commissioners for charitable uses, shall from time to time inquire concerning gifts and bequests to poor prisoners; who may send for papers and witnesses, and examine persons upon oath, and order and settle the payment thereof in such easy and expeditious way as they shall think proper. *f. 9.*

Charities to
gaols.

And a table of such benefactions, after every such settling thereof, shall be transmitted to the clerk of the peace to be registered by him without fee; and another table to the gaoler, to be hung and kept up by him in some conspicuous place in his gaol, where the prisoners may have easy resort thereto without fee. *f. 10.*

By 52 G. 3. c. 160. County justices may order parochial relief to debtors confined in other than county gaols under certain circumstances. For this act, see vol. 4. p. 171.

On the petition in term time of any person being or having been under arrest, complaining of any exaction or abuse by the gaoler or other officer unto any of the courts of record at *Westminster*, from whence the process issued, or in vacation time, to any of the judges of such court, or to the judges of assize or great sessions, or judges of any other court of record from whence such process issued, they shall hear and determine the same in a summary way, and make such order thereupon for redressing the abuses, and for punishing the

Redress of
grievances.

the offender, and for making reparation to the party injured; as they shall think just, together with full costs of the complaint; the same to be enforced by attachment, or in any other manner as other orders of the said courts or judges may be enforced. *f. 11.*

Insolvents. See that title, vol. 3.

Sect. XIII. *Concerning houses of correction.*

Building or repairing houses of correction.

By the 7 *J. c. 4.* it was enacted, that before *Michaelmas* 1611, there should be built or provided within every county one or more fit and convenient houses of correction, with convenient backside thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto such persons, as by the justices in sessions should be directed, upon trust, that the same should be employed for keeping, correcting, and setting to work the said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons. *f. 2.*

On presentment of a jury.

And by the 17 *G. 2. c. 5.* On presentment of the grand jury at the assizes, great sessions, or general gaol delivery, held for any county or liberty (or at the general sessions, or general quarter sessions of the peace, where there shall be no assizes, great sessions, or general gaol delivery held, 14 *G. 2. c. 33. f. 2.*) that there is no house of correction, and that it will be necessary to provide one or more, or that the houses of correction already provided are not sufficient, and that it will be necessary to provide one or more there, or that they are not sufficient or convenient, or want to be enlarged, the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backside or outlets thereto adjoining, or to purchase land and to erect such house or houses upon part thereof, and to lay out the rest of such lands for such backside or outlets, and to conclude and agree upon raising such sums of money as on examination of able and sufficient workmen or others shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions shall direct, in trust and for the use and purposes aforesaid. *f. 30.*

Or by presentment of a justice.

And by the 22 *G. 3. c. 64.* the want of houses of correction, or the insufficiency thereof, may be presented at the quarter sessions, by a justice on his own view or knowledge, as well as by the grand jury; which presentment shall be proceeded

proceeded upon in the same manner as if it had been made by the grand jury. *f. 6.*

The justices at their quarter sessions shall nominate one or more justices within their respective districts, to examine the houses of correction within their respective jurisdictions, who shall inspect the same, and report to the sessions the state thereof, and the increase of number, or additions, or alterations, which may be necessary, having regard to the classing the several persons who shall be kept there according to the nature of their crimes and punishments, and for providing proper places for the employment of such persons who are committed to hard labour, and also to keeping the prison clean and wholesome; and may employ proper persons to make plans and estimates of new buildings, additions, or alterations, which may be thought necessary; and shall make a report thereof to the justices at the said next quarter sessions, who shall consider the same, and make such orders and enter into such contracts relating thereto as they shall think fit. 22 G. 3. c. 64. *f. 1.* 24 G. 3. *sess. 2. c. 55. f. 1.*

Visitors and inspectors to be appointed.

Two justices, within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a year or oftener if need be, and examine the state and management thereof, and report the same to the next sessions, that if any thing be amiss it may by order of such sessions be amended. 17 G. 2. c. 5. *f. 31.*

And the justices in sessions shall take care that the houses of correction (excepting those erected or maintained by particular founders) shall be duly fitted up, furnished, and supplied with implements, materials, and furniture for keeping, relieving, setting to work, employing, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be sent to, confined, or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating of the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence. *f. 31.*

Fitting up the house.

By 22 G. 3. c. 64. as soon as such building is made or altered and completed, the justices in sessions shall order the same to be fitted up and furnished as they shall think fit, and shall provide them with such mills, looms, utensils, and implements, as they shall judge proper, and shall provide materials for manufactures for the employment of persons committed for hard labour; and may appoint a temporary assistant to instruct such prisoners in any business or branch of manufacture which they shall think proper. *f. 3.*

Assistant may be appointed.

And

Appointing the
master.

And the justices in sessions shall appoint at their will and pleasure fit persons (women excepted, 22 G. 3. c. 64. s. 10.) to be governors or masters of such houses so to be provided. 7 J. c. 4. s. 4. 17 G. 2. c. 5. s. 31.

His salary.

For the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet to be paid quarterly beforehand by the treasurer, (the said master or governor giving sufficient security for the continuance and performance of the said service). 7 J. c. 4. s. 6. 17 G. 2. c. 5. s. 33.

They may also allow him some proportion of the profits earned by the prisoners. 22 G. 3. c. 64. s. 9.

Governor and
other officers to
be appointed.

And by 31 G. 3. c. 46. The justices at any general or quarter sessions, or special adjournment thereof held for that express purpose, of which sessions or adjournment public notice shall be given in some newspaper circulating in such county, signed by the clerk of the peace, and at which five justices at the least shall be present, shall appoint a governor or taskmaster and such other officers for every place of confinement used as a house of correction or penitentiary house; and may allow them such salaries as they shall deem necessary, and may order the same to be paid out of the county rate; and may at their sessions or any adjournment thereof, remove such governor and other officers, and appoint others in their stead, and increase or diminish their number exclusive of the governor, and alter their salaries and allowances as they shall find convenient. And in fixing the salary of such governor or taskmaster, the justices shall have regard as far as may be to making the emoluments of the office depend on the quantity of work done, that it may become his interest as well as duty to see that all persons under his custody be regularly and profitably employed. And such governor and other officers shall give such security for the performance of their duty, and to such person as the sessions shall appoint; and for any negligence or misbehaviour the governor or other officers may be proceeded against, either on such security, or by fine at such sessions, in the same manner as any governor of any house of correction is punishable by 7 J. 1. c. 4. or 17 G. 2. c. 5. s. 1.

And to give se-
curity.

Sessions to make
rules and orders,
&c.

And the justices at some general or quarter sessions or adjournment thereof as aforesaid, at which five justices at the least shall be present, may make such rules and orders for receiving, separating, classing, dieting, cloathing, maintaining, employing, reforming, governing, managing, treating, and watching offenders during their confinement in the said penitentiary houses; and also for adjusting what aid shall

shall be given to them, as well during such confinement as on their being released, as to them shall seem meet; but to have regard to the discipline, provisions, and directions of the 19 G. 3. c. 47. (a). But such rules and orders so to be made shall not begin to have force until they have been submitted to the judges of assize, and a certificate or declaration shall have been subscribed by them, that they do not see any thing contrary to the law therein. And all such rules and orders may at any time afterwards be added to or altered, subject to the same rules and regulations as aforesaid. 31 G. 3. c. 46. s. 2.

But nothing herein shall extend to deprive any convict of any allowance made by law, provided only that the application thereof shall be subject to the rules herein directed. *Id.*

Such governor and his assistants shall have the same power over offenders under confinement as are incident to the office of a sheriff or gaoler, and in like manner shall be answerable for any escape; and such governor shall have power to hear complaints and examine persons touching offences, and to punish the same (except by whipping) in the same manner as the governors of the two penitentiary houses directed to be built by the said act of 19 G. 3. c. 74. And in case of the repetition of such offences, or of offences more enormous, which such governor is not by this act empowered to punish, he shall report the same to the visiting justices, or one of them, who shall have power to inquire upon oath and determine concerning all such offences, and shall order such offenders to be punished, either by moderate whipping, repeated whippings, or close confinement for any term not exceeding one month. s. 3.

Powers and duty of governors.

If any person ordered to hard labour shall during his term break prison, or escape from his place of confinement, or in the conveyance thereto, or from the person having him lawfully in custody; or if any person shall rescue any offender who shall be ordered to hard labour, either during his conveyance to prison, or whilst in the custody of the person under whose charge he shall be confined; or shall be aiding or assisting therein; or if any person having such custody as an assistant shall voluntarily or negligently permit such offender to escape; or if any person shall by supplying arms, tools, instruments, or means of disguise, or otherwise in any manner aid or assist any such offender in any escape, or attempt to escape, though no escape be actually made; every such offence shall be punished in the same manner as the like

Penalty on persons escaping, or assisting therein.

(a) See tit. Transportation.

offence would be punishable by the aforesaid act of 19 G. 3. c. 74. concerning penitentiary houses. *Id.*

Provisions of 19 G. 3. respecting escapes, to extend to this act.

And all provisions made by the said act of 19 G. 3. c. 74. for carrying on prosecutions for escapes, attempts to escape, breaches of prison, and rescues from the said penitentiary houses, shall extend to this act. *f. 4.*

Visiting justices to be appointed.

For the better preventing abuses in houses of correction, the justices shall at every sessions after the passing of this act appoint two or more justices visitors of every such place of confinement, who shall either together or singly personally visit and inspect such prison at least three times in each quarter of a year, and oftener if occasion shall require; and shall examine into the state of the buildings, the behaviour and conduct of the officers, and the treatment and condition of the prisoners, the amount of their earnings, and the expences attending such prison; and in matters of pressing necessity and within the powers of their commission as justices, shall take cognizance thereon, and proceed to regulate and redress the same; and at every sessions the said visiting justices respectively shall make a report in writing of the state and condition of the same, and of all abuses which may occur to their observation therein; and the chairman of such sessions shall call upon the said visitors for such report. And any justice of his own accord, and without being appointed a visitor, may enter into and examine the same at such time and as often as he shall think fit; and if he shall discover any abuses therein, he shall report the same in writing to the next sessions or adjournment; and when any abuses shall be reported in manner aforesaid, the same shall be taken into immediate consideration, and such effectual measures shall be adopted for inquiring into and rectifying the same and as soon as the nature of the case will allow. *f. 5.*

Any other justices may examine houses of correction, &c.

Prisoners to be kept separate.

The justices in settling plans for such houses, shall take care that separate apartments be provided in the house of correction for all persons committed upon charges of felony or convicted of any theft or larceny, and committed for punishment by hard labour, in order to prevent any communication between them and the other prisoners, and also proper apartments, covered or open, as found most convenient for employing the several persons who are to be kept to hard labour; and they are also to provide separate apartments in each division of the said house of correction for the women who shall be committed thither. 22 G. 3. c. 64. *f. 1.*

Time and manner of punishment.

The said master shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able);

for

for such time as they shall continue therein, and to punish them by putting fetters or gyves upon them, and by moderate whipping; and the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house, shall in no sort be chargeable to the county for any allowance, either at their bringing in or going forth, or during their abode there; but shall have such and so much allowance, as they shall deserve by their own labour and work. 7 *J. c. 4. f. 4.*

The governor shall have power to put handcuffs or fetters upon any prisoner who shall behave in a refractory manner, or shew a disposition to break out of prison, but such governor shall give notice thereof to one of the visiting justices within forty-eight hours after the prisoner shall be so fettered; and he shall not continue such fettering longer than six days without obtaining an order in writing from one of the visiting justices. 22 *G. 3. c. 64. f. 11.*

Governor's power to restrain prisoner.

And whereas doubts may arise, where authority is given to any justice or justices to commit offenders to the house of correction for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly limited, it is enacted that where any offender shall be committed as aforesaid by virtue of any law in now being or hereafter to be made, and the time and manner of their punishment is not expressly limited, directed, and appointed, the said justice or justices shall commit such offender to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him for such time as they shall see fit, not exceeding three months. 17 *G. 2. c. 5. f. 32.*

Justices' power of commitment where a statute does not specify the period.

By the 15 *G. 2. c. 24.* It is enacted, that where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the support and maintenance of the house or houses of correction of the county, riding, or division, in which such liberty, &c. is situate; the justices of the peace of such liberty, &c. may commit such person to the house of correction of the county, riding, or division in which such liberty, &c. is situate, which person so committed shall and may be received, detained, dealt with, and ordered, and be set and kept to hard labour, or conveyed and sent away or discharged, and be subject and

Persons apprehended within any liberty, &c. may in certain cases be committed to the house of correction of the county, &c.

liable to the same correction and punishment as if committed by any justice of the peace of the same county, riding, and division.

In cases of summary conviction.

And by 24 G. 3. c. 55. *f.* 12. Where any justice or justices are or shall be by any act of parliament empowered to convict any person before him or them in a summary way, without the intervention of a jury, such justice or justices may commit such person so convicted to the house of correction, in lieu of to the said common gaol.

On this subject; see title *Magistrants*.

Prisoners in certain cases to have half their earnings.

By the 22 G. 3. c. 64. The governor or keeper of every house of correction shall employ all such persons as shall be prisoners therein and kept and maintained at the expence of the county, division, or district where the house is, in some work or labour which is not severe, although such prisoner was not, by the warrant of his commitment, ordered to be kept to labour; and shall enter a separate account of the work done by every person under that description, and account with and pay to him one-half of the nett profits which he shall have earned at the time of his discharge, and not before. *f.* 7.

Chaplain appointed.

The justices in sessions may, if they think fit, appoint a minister of the church of *England*, residing near to the house of correction, to perform divine service there every *Sunday*, and appoint him a salary not exceeding 20*l.* a-year to be paid out of the county rates, or other public money collected therein; but such salary to be diminished at any future sessions, if the justices shall think fit. *f.* 12.

Wine, ale, or spirituous liquors not to be drank there.

No governor, or keeper, or person employed under him as assistant, or otherwise, shall sell or be capable of being licensed to sell or have any benefit from the sale of any wine, ale, beer, spirituous, or other liquors, or any other article or thing used in such house, or by any person confined therein, during the time of such employment; and every person offending therein shall, on conviction upon oath before a magistrate having jurisdiction there, forfeit 10*l.*; and shall be dismissed from his employment as governor or keeper or assistant in such house, by order of the justices at the next sessions, on proof made before them of the said offence. And no wine, ale, spirituous or other liquors, shall be brought into the house of correction to be drank there, unless for a medical purpose, by a written direction under the hand of the apothecary or surgeon usually attending such house. *f.* 8.

The said penalty of 10*l.* in default of payment, after due summons and demand, to be levied by distress and sale, rendering the overplus, after charges of distress and sale deducted, and for want of sufficient distress, the offender to be committed

mitted to the common gaol or house of correction for any time not exceeding six calendar months, nor less than one.

f. 13.

The justices at every general quarter sessions shall call upon the keeper of the house of correction to produce to them in writing a list of the several persons then in custody, with a description of the offence, the time for which committed, distinguishing particularly those who by warrant of commitment are to be kept to hard labour, and also distinguishing the age and sex of every such person committed to hard labour, and in what trade or business he hath been employed, and what he hath been most accustomed to, and is best qualified for, and how he has behaved during his confinement. f. 3.

Master to account to the sessions.

If the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody; or if any person committed to his custody shall be troublesome to the county, by going abroad; or otherwise shall escape away from the house of correction before he shall be from thence lawfully delivered; the said justices shall set down such fines and penalties upon the said master or governor, as they shall think fit; and all fines and penalties shall be paid to the treasurer, and accounted for by him. 7 Jac. 4. f. 9.

Master misbehaving.

If the governor or master shall not set or keep the said idle and disorderly persons, rogues, vagabonds, or incorrigible rogues to hard labour and punish and correct them according to the directions of the warrants or orders by which they shall be committed to or detained in their custody, or shall otherwise misbehave themselves or be defective, remiss, or negligent in their duty, the said justices at their sessions, shall set upon them such fines and penalties as they shall think fit in such manner as fines and penalties may be set on governors and masters of such house for the neglect therein mentioned by 7 Jac. 1. c. 4. 17 G. 2. c. 5. f. 31.

The said fines to be paid to the treasurer of the county, riding, liberty, or division, and be part of the county stock. *Ib.*

The said justices at sessions may from time to time remove the governor, master, or other officer of such house of correction; and may make such orders and regulations as they shall think fit, for the better governing and regulating of the said houses of correction, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence according to the intent of this act, which order shall be final, and not removeable by *certiorari*. *Ib.*

His removal.

If the person removed by order of sessions shall refuse or neglect to quit possession of such house of correction for 10 days

days next after notice in writing by the clerk of the peace, two justices, (upon producing to them such order of sessions, or an attested copy thereof, and on oath by one credible witness of such notice having been given to the person so removed, and of his having refused or neglected to quit possession) by warrant under their hands and seals, may direct the sheriff to remove him out of such house of correction, who shall thereupon clear possession as upon a writ of habere facias possessionem. *Ib.*

Expences of building, repairing, and purchasing land, &c. how to be paid.

To defray the expences of erecting, purchasing, hiring, enlarging, altering, and repairing houses of correction, and of purchasing land to erect them upon, and for backslides and outlets, and of fitting up and furnishing such houses, and of sending persons to and from the same, and maintaining and employing them there, and other necessary charges, the justices in sessions may cause the same to be raised in the same manner as the general county rate; and when the amount thereof shall exceed one-half of the amount of the ordinary annual assessment for the same, (to be computed at a medium for the last five years preceding,) the justices in sessions may, from time to time, borrow or mortgage of the said rates any sum not less than 50*l.* nor more than 100*l.* each, as to them or the major part of them, such major part not being less than five, shall appear necessary; and to secure the money so borrowed, by an order signed by the chairman and two justices present at the time of making such order, which shall be an effectual security to the person lending the same; which security may from time to time be assigned by the person holding the same, by indorsing his name on the back thereof: And the said justices may order the interest due upon such securities, and so much of the principal sum as shall be equal at least to the said interest, to be paid off yearly, at a certain date to be fixed by such justices, until the whole shall be discharged; and an account thereof shall be kept in a book to be provided by a person appointed for that purpose, which book shall be delivered into court at every quarter sessions, and shall be inspected by the justices, who shall make such orders relating thereto as to them shall seem meet; and if it shall appear that the person so appointed shall neglect or delay to apply the money in his hands to the purposes directed, he shall forfeit double the amount thereof. And such securities shall be first discharged as shall bear the highest interest: Provided that the whole money borrowed be fully paid within 14 years from the time of borrowing the same. 17 G. 2. c. 5. s. 33. 22 G. 3. c. 64. s. 5. 24 G. 3. sess. 2. c. 55. s. 2, 3, 4.

The justices in sessions may sell the materials of any old house of correction, or the scite thereof, or any part thereof, which shall not be necessary for the building, repairing, or enlarging such new house, and shall apply the money arising by such sale to the purposes aforesaid. 24 G. 3. *sess.* 2. c. 55. s. 5.

Selling the old materials.

The following rules, orders, and regulations, for the better government of the persons to be committed to the said houses of correction, shall be duly observed and enforced in every such house, subject nevertheless to such additions as shall from time to time be made by the justices at their *Midsummer* or *Michaelmas* sessions, provided that such additions shall not be contradictory to the rules, orders, and regulations here established; and for the purpose of having them more generally known, and more strictly attended to, the keeper shall cause the same to be printed in plain legible characters, and fixed in some conspicuous part of every such house of correction. 22 G. 3. c. 64. s. 4.

Rules and orders established.

“ Rules, orders, and regulations to be observed and enforced at every house of correction provided and established, or to be provided and established, under the authority of the acts of the seventh year of the reign of his late majesty king *James* the first, the seventeenth of king *George* the second, and the twenty-second of king *George* the third.

“ I. That the several persons who shall be committed to the house of correction to be kept to hard labour shall be employed (unless prevented by ill health) every day, during their confinement, (except *Sundays*, *Christmas-day*, and *Good-Friday*,) for so many hours as the day-light in the different seasons of the year will admit, not exceeding twelve hours, being allowed thereout to rest half an hour at breakfast, an hour at dinner, and half an hour at supper, and that the intervals shall be noticed by the ringing of a bell.

“ II. That the governor of each house of correction shall adapt the various employments, which shall be directed by the justices at their quarter sessions, to each person in such manner as shall be best suited to his or her strength and ability, regard being had to age and sex.

“ III. That the males and females shall be employed and shall also eat and be lodged in separate apartments, and shall have no intercourse or communication with each other.

“ IV. That every person so committed shall be sustained with bread, and any coarse but wholesome food and water; but persons under the care of the physician, sur-

“ geon, or apothecary, shall be sustained with such food and liquor as he shall direct.

“ V. That the governor, and such other persons (if any) as shall be employed by the justices to assist the governor, shall be very watchful and attentive in seeing that the persons so committed are constantly employed during the hours of work ; and if any person should be found remiss or neglect in performing what is required to be done by such person to the best of his or her power and ability, or shall wilfully waste, spoil, or damage the goods committed to his or her care, the governor shall punish every such person in the manner hereafter directed.

“ VI. That if any person so committed shall refuse to obey the orders given by the governor, or shall be guilty of profane cursing and swearing, or of any indecent behaviour or expression, or of any assault, quarrel, or abusive words to or with any other person, he or she shall be punished for the same in the manner hereinafter directed.

“ VII. That the governor shall have power to punish the several offenders for the offences herein-before described, by closer confinement ; and shall enter in a book, to be kept by him for the inspection of the justices at the quarter sessions and the visiting justice or justices, the name of every person who shall be so punished by him, expressing the offence, and the duration of the punishment inflicted.”

Form of a commitment to the house of correction.

Westmorland.	{	<p>J. P. esquire, one of the justices of our lord the king assigned to keep the peace within the said county, to the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.</p>
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THESE are to command you the said constable in his said majesty's name forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of A. O. being charged before me upon oath [or, convicted before me, or otherwise as the case shall be: And here set forth the offence.] And you the said keeper are hereby required to receive the said A. O. into your custody in the said house of correction, and him there safely to keep, until ——— [or, for the space of ——— And here set forth the time and the manner of punishment.]

ment.] *Herein fail you not. Given under my hand and seal the — day of — in the — year of —.*

Concerning *penitentiary* houses for the punishment of convicts, see title *Transportation*.

XIV. *Concerning the prisons of the king's bench and marshalsea.*

The justices in *Easter* sessions shall set down what sums shall be sent out of every county or place corporate for the relief of the poor prisoners of the *king's bench* and *marshalsea*, so as there be sent out of every county yearly 2cs. at the least to each of the said prisons; to be paid by the high constables out of the general county rate, to two such treasurers, or one of them, as by the more part of the justices of the county shall be elected to be treasurers; which treasurers, on the first day of *Trinity* term yearly, shall pay over the same to the lord chief justice of *England*, and knight marshal, or to whom they shall appoint, taking their acquittance for the same, or in default of the chief justice to the next most ancient justice of the *king's bench*, equally to be divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El. c. 2. f. 12, 13, 14.* 11 *G. 2. c. 20. f. 1.* 12 *G. 2. c. 29.*

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be enforced as other rules of the said court, at the costs and charges of the treasurer. 11 *G. 2. c. 20. f. 2. 4.*

And that the treasurer may be the better amenable to the said court, he shall within 30 days after his election or appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entered by him; for which entry no fee shall be paid.

Gauger. See *Crise.*

Gin. See *Crise.*

For the Duties on Glafs. See *Crise.*

Gloves.

[34 G. 3. c. 10. — 6 G. 3. c. 19. s. 1 — 8. — 36 G. 3. c. 80. s. 1.]

Duty on gloves,
&c. repealed.

BY 34 G. 3. c. 10. s. 1. The duty on gloves and mittens imposed by 25 G. 3. c. 55. is repealed, except the duty on licenses. And by 36 G. 3. c. 80. s. 1. the said duty on licenses is also repealed.

Gloves, &c. not
to be imported.

And by 6 G. 3. c. 19. For the encouragement of the importation of foreign kid and lamb skins unmanufactured, if any foreign manufactured leather gloves or mitts shall be imported (and by 25 G. 3. c. 55. the same is extended to foreign leather which is not completely made into gloves and mittens, but is cut into the form of gloves and mittens, called *Shapes* or *Trunks*,) the same shall be forfeited, and may be searched for and seized by any officer of the customs or excise: And every person importing the same or aiding therein; or, being a vender or retailer of any kind of leather gloves or mitts, in whose custody or possession any such foreign manufactured leather gloves or mitts, or leather cut into the form of gloves or mitts called shapes or trunks shall be found, or who shall sell or expose the same to sale or conceal the same with intent to prevent the forfeiture and seizure thereof shall, over and above the forfeiture of the said goods, and all interest he may have therein, forfeit also 200l. with double costs. s. 1.

Two justices
may determine
offences out of
the bills.

If the seizure shall be out of the limits of the bills of mortality, and not exceeding the value of 20l. two justices on information that such were seized as unduly brought into, and not manufactured within this kingdom, may hear and determine the same, and proceed to condemnation or discharge as shall seem just. s. 2.

Gloves con-
demned to be
exported.

After condemnation the same to be publicly sold to the best advantage, by the candle, for exportation; and not to be delivered out till security be given that the same shall be exported, and not landed in any part of his majesty's dominions. s. 3.

Application of
the forfeiture.

Half the produce arising from the sale to go to the king; and half to the officer who shall seize, and secure the same. *Id.*

Proof to lie on
the offender.

If any doubt shall arise where the same were manufactured, the proof shall lie on the person in whose possession they shall be found, and not on the prosecutor; and if no proof be given that they were manufactured in *Great Britain*, they shall without any further proceeding be taken to have been manufactured out of *Great Britain*. s. 4.

Provided,

Provided, that if any person, in whose possession such goods shall be seized, (such person not importing or concealing the same,) shall discover upon oath, before one justice, the person who sold the same to him, so as the vender may be convicted, he shall be discharged from all penalties and forfeitures for having the same in his possession. *f. 5.*

The said forfeiture to be sued for in the courts at *Westminster*; and to be distributed, half to the king, and half to the officer who shall inform and sue. *f. 6.*

But if the officers of the customs or excise shall neglect or refuse, for one calendar month after condemnation, to prosecute for the pecuniary penalty, any other person may sue for the same, to be distributed as aforesaid. *f. 7.*

Provided that nothing herein shall extend to subject any wearer of such gloves or mitts, as part of his dress only, to any forfeiture or pecuniary penalty. *f. 8.*

Gloves, silk. See *Silk*.

Good behaviour. See *Surety*.

Grand larceny. See *Larceny*.

Greyhound. See *Game*.

Gunpowder.

[16 C.1. c. 21. — 1 J. 2. c. 8. f. 3. & 12 G. 3. c. 61. —
46 G. 3. c. 121.]

BY an act made in the 16 C.1. c. 21. (to wit, in 1640, being the last statute of force in that king's reign,) all subjects may take and sell gunpowder, and bring into the kingdom salt-petre, brimstone, or any other material for the making of it. Who may make gunpowder.

And by a statute made in the first year of the reign of king *James* the second (which is also somewhat remarkable,) it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a præmunire. 1 J. 2. c. 8. f. 3.

It seemeth, that erecting powder mills, or keeping powder magazines near a town, is a nuisance by the common law; for which an indictment or information will lie. In the case of *R. v. Williams, E. 12 W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *R. v. Taylor, T. 15 G. 2.* the court granted Erecting powder mills near a town, a nuisance.

granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surrey*, to the endangering of the church and houses where he lived. 2 *Str.* 1167. (Or rather it should have been expressed, to the endangering of the lives of his majesty's subjects.)

In what places
gunpowder may
be made.

By the 12 *G. 3. c. 61.* (which reduces into one and repeals all former acts relating to the making, keeping, and carrying of gunpowder.) No person shall use, or cause to be used, any mill or other engine for making gunpowder in any place, except in mills and other places where the manufacture of gunpowder shall be actually carrying on at the time of the commencement of this act, or where it shall afterwards become lawful to carry on such manufacture by license for that purpose as herein-after directed; on pain of forfeiting all gunpowder manufactured otherwise; and 2s. for each pound thereof. *f. 1.*

No pestle mill
shall be used in
making.

No person shall, for the making of gunpowder, use any mill or engine worked with a pestle, commonly called a *pestle mill*; on pain of forfeiting all gunpowder manufactured therein, and 2s. for each pound. *f. 2.*

What quantity
shall be made at
one time.

No person shall, in any mill or engine, make at any one time under any single pair of mill stones any quantity of gunpowder, or materials to be made into gunpowder, exceeding 40lb.; on pain of forfeiting all above 40lb. and also 2s. for each pound. *f. 3.*

Exception of
Battle powder.

Provided, that nothing in this act shall extend to the powder mills now erected in the parishes of *Battle*, *Crowhurst*, *Seddecomb*, and *Brede*, in the county of *Suffex*, so far as relates to the making of such fine fowling gunpowder only, as is known by the name of *Battle powder*. *f. 5.*

What quantity
shall be dried at
one time.

No person shall dry, or cause, &c. at any one time in any one stove or place used for the drying of gunpowder any quantity exceeding 40 cwt; on pain of forfeiting all above that weight, and 2s. for each pound. *f. 6.*

What quantity
shall be kept in
or near the place
of making.

No person shall keep in any corning-house, drying-house, dusting-house, or other place used in making gunpowder, or in any building adjoining or belonging thereto, (except magazines or storehouses constructed with stone or brick, and situate 50 yards at least from the gunpowder mill,) any greater quantity of gunpowder than shall be necessary for the immediate work then carrying on in such house or other place; on pain of forfeiting all the gunpowder above such necessary quantity, and 2s. for each pound. *f. 7.*

Magazines to be
kept remote
from the mill.

Every person and persons keeping or using any mill or other engine for making gunpowder, shall, besides the magazines or storehouses near their mills, have a good and sufficient magazine remote from their respective mills, for the

the purpose of receiving and safe keeping all the gunpowder made at such mills, as soon as the same can from time to time be conveniently removed thereto (which last-mentioned magazine shall be built with brick or stone near the river *Thames*, and below *Blackwall*, or in some other convenient place to be licensed by the justices as hereinafter mentioned;) on pain of forfeiting 25*l.* for every month during which he shall make gunpowder without having such magazine, and 5*l.* for every day during which he (not being hindered by stress of weather or other just impediment) shall wilfully neglect or delay removing, with due diligence, the gunpowder made at such mill from thence or from the magazine or storehouse adjoining thereto to the magazine so to be situate remote from the mill. *§.8.*

Every such maker who shall keep, or permit to be kept, any charcoal within 20 yards of any mill or other engine for making gunpowder, or of any drying, corning, or dusting-house, or magazine, or storehouse thereto belonging, shall forfeit 5*l.* for every week during which it shall be so kept. *§.10.*

Charcoal not to be kept near the mill.

No person, being a dealer in gunpowder, shall keep at any one time more than 200*lb.* of gunpowder, and not being such more than 50*lb.* in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him (all buildings and places adjoining each other being deemed one house within the act) or on any river or other water, (except in carriages loading or unloading, or passing on the land, or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather,) within the cities of *London* or *Westminster*, or within three miles of either of them; or within any other city, borough, or market-town, or one mile thereof; or within two miles of any palace or houses of residence of the king, or any of the king's gunpowder magazines; or half a mile of any parish church; or in any other part of *Great Britain*, except in mills or other places at the commencement of this act used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of this act; on pain of forfeiting all beyond the quantity hereby allowed to be kept, and the barrels in which such shall be, and also 2*s.* for every pound beyond such allowed quantity. *§.11.*

With permits gunpowder may be kept.

Provided, that it shall be lawful for any person to keep, for the use of any mine or colliery, any quantity not exceeding 300*lbs.* weight, in any magazine or warehouse, so as the same be within 200 yards of such mine or colliery, and

and not within any of the limits herein-before particularly described. *f.12.*

The sessions to
license the erect-
ing of mills or
magazines.

And whereas it may it be necessary to have some places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it shall therefore be lawful for the justices in sessions, from time to time, to license the erecting or having such mills and offices, or such magazines for keeping unlimited quantities in places, not being within *London* or *Westminster*, or any other limits herein before particularly described, the person applying having first given 14 days notice in writing of the intention to make such application, as also of the place or places proposed for such purposes respectively, to an overseer or churchwarden of the parish or place wherein it is proposed to erect such new mill and offices or magazine, or of an adjoining parish if the place be extra-parochial; which overseer or churchwarden shall cause such notice to be publicly read on the *Sunday* next ensuing in the parish church after divine service. *f.13.*

And if the justices in the said sessions shall refuse to grant such license, or to appoint pieces of ground for magazines remote from mills, the party aggrieved may apply to the said justices then present for a special state of the case, and the justices shall certify such case, together with the proofs offered for and against the application, in order that the said case and proceedings may be removed by *certiorari* into the court of king's bench; and the justices in their return to the *certiorari* shall state such special case. And if the court of king's bench shall be of opinion that the justices ought not to have refused such license or appointment, they shall order the justices to grant, or to make such at their next sessions, and shall award costs on the writ of *certiorari* as they shall think fit. *f.14.*

Provided nevertheless, that no person shall be liable to any penalty or prosecution under this act, for keeping unlimited quantities of gunpowder without such license of the justices, in any magazine remote from any gunpowder mill, and already built and used for that purpose, in any place not being within *London* and *Westminster*, and the other limits hereinbefore described, until the expiration of six calendar months; after an adjudication by the justices that the same is dangerous: And they shall not have power to make such adjudication, except on complaint to them by some householder of the parish or place in which the magazine shall be,

be, and after summons of the owner and examination of witnesses. *f. 15.*

And the justices in sessions, on application by such maker, may appoint proper and convenient pieces of ground, not being in *London* or *Westminster*, or other the limits aforesaid, and not exceeding one acre in any one place, with the use of convenient roads thereto, on which they may erect magazines, for keeping any quantity after having agreed with the owner for the purchase of the same. And if such owner shall not agree, or by reason of any impediment cannot agree, the justices shall issue a warrant to the sheriff, to impanel and return a jury to appear before them at a time and place appointed in the warrant, who shall upon their oaths inquire into the true value of the said pieces of ground, with the use of such convenient roads thereto. And the justices may send for any persons interested, and examine any parties or witnesses upon oath. And the verdict of the jury shall be kept amongst the records of the sessions. And the judgment of the said justices thereon shall be final. And the sum of money so to be adjudged, not exceeding 30 years' purchase, shall be paid to the owner of the ground; and upon such payment, or in case of refusal to accept the money, then upon leaving the same with the justices for the benefit of the owner, the inheritance of the ground and the use of the said roads thereto, shall be vested in the purchaser his heirs and assigns for the purpose aforesaid, and not otherwise. *f. 16.*

No person shall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage by land; or more than 200 barrels in any barge, boat, or other vessel by water (except in vessels with gunpowder imported from or to be exported to any place beyond the sea, or going coastwise;) and the barrels in which it shall be carried shall be close joined and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage: And each barrel shall contain no more than one hundred pounds of gunpowder: And when conveyed by land shall be entirely closed in a leathern bag, or a bag commonly called a saltpetre bag: And every carriage in which gunpowder shall be conveyed by land shall have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts, over all the gunpowder therein contained: Also no gunpowder shall be conveyed in any barge, boat, or other vessel by water, (except in vessels for importation, or exportation, or going coastwise as aforesaid,) that hath not a close deck; and as soon as any gunpowder is put on board such vessel, all such gunpowder shall be covered with raw hides or tarpaulins. — And all gunpowder carried in greater quantity

What quantities
shall be carried
at one time.

quantity or in other manner than is hereinbefore prescribed, and the barrels in which such gunpowder shall be, may be seized by any person, who shall have the same authority to remove such gunpowder and barrels, and for that purpose to use during the space of 24 hours after seizure the carriage or vessel in which such gunpowder shall be seized, and the tacklings, beasts, and accoutrements belonging thereto, on paying a recompence for the use thereof, and to detain the same as is hereinafter given to persons searching under a justice's warrant: And such seizure shall be for his own use on conviction of the offender. *f. 18.*

And when any barge, boat, or vessel having stale, condemned, or returned gunpowder on board, arrives at the wharf, quay, or other place where the same is intended to be landed, no person shall begin to unload, or shall bring down to such wharf, quay, or other place, with intent to load in such vessel, any other gunpowder until the whole or part of such stale, condemned, or returned gunpowder be first unloaded and carried away from such wharf, quay, or other place of landing: And after such unloading and carrying away of part of such gunpowder, no person shall begin to load, or shall so bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all such gunpowder as shall be so brought down or loaded contrary hereunto. *f. 19.*

Combustibles
not to be kept
on shipboard.

If any person having the care or management of any barge, boat, or other vessel (except ships for importation, exportation, or going coastwise, as aforesaid,) loaded with gunpowder, or any other person on board the same, shall bring, have, or use or permit, &c. any charcoal or other combustible matter, or any fire or lighted candle, or shall smoke, or wittingly permit any person to smoke on board the same; he shall forfeit 5*l.* *f. 20.*

Gunpowder in
carrying not to
be delayed.

If any person having the care of any carriage used for the conveyance of gunpowder by land, shall after beginning to load therein any quantity, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose; or if any person having the care of any vessel used for the conveyance of gunpowder by water (except as aforesaid,) shall after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, quay, or other place of loading, or in the loading or unloading thereof suffer any longer time to pass than shall be reasonably necessary for that purpose, not exceeding 18 hours, unless hindered by the weather; or if any person shall take in or carry in such carriage or vessel any other lading of any kind; he shall forfeit 10*l.* *f. 21.*

Provided, that none of the aforesaid provisions concerning the conveying, loading, or unloading shall extend to any other carriage or vessel than such as shall carry a quantity of gunpowder exceeding 1cwt. *f. 22.*

And any justice on demand made and reasonable cause assigned upon oath may issue his warrant for searching, in the day time, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried contrary to this act; and all gunpowder found on such search to be made, &c. contrary to this act, and also the barrels shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and in case of gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of 24 hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, (paying afterwards to the owner a sufficient recompence for the use thereof, to be settled by the justices before whom the complaint shall be heard,) and may detain such gunpowder and barrels, till it shall be adjudged on a hearing before two such justices whether the same shall be forfeited. *f. 23.*

Power of the justices to search.

No master of any vessel in the *Thames* outward bound shall receive on board more than 25lb. of gunpowder (except for the king's service) before the arrival of such vessel at or below *Blackwall*; and the master of every vessel coming into the *Thames*, shall (except in case of the king's service) put on shore in proper places all the gunpowder on board above 25lbs., either before the arrival of such vessel at *Blackwall*, or within 24 hours, (if the weather will permit,) and shall not afterwards have on board more than 25lbs. (except for the king's service); on pain of forfeiting all the gunpowder found on board above 25lbs., and the barrels containing the same, and also 2s. for every lb. above the quantity of 25lbs. *f. 24.*

Regulations on the river Thames.

And the master, wardens, and assistants of the corporation of Trinity-house of *Deptford Strond*, shall appoint searchers, who may between sun-rising and sun-setting enter any ship or vessel (except his majesty's ships) in the *Thames* above *Blackwall*, and search for unlawful quantities of gunpowder; and shall have the same powers of seizing, removing to proper places, and retaining all such gunpowder and barrels, as are herein-before given to persons searching by a justice's warrant. *f. 25.*

All penalties on this act shall be recoverable before two justices, on conviction of the offender by confession or oath of one witness, and be distributed half to the king and half to the informer; and where the penalty is pecuniary, it shall

Penalties, how to be recovered.

be levied by distress and sale, rendering the overplus after deducting the penalty and expences; and for want of sufficient distress, the offender shall be committed to the house of correction, to be kept to hard labour not exceeding six months nor less than three. *f.* 26.

Prosecution to be commenced within 14 days after seizure of the gunpowder, or commission of the offence where there shall not be any seizure. *f.* 27.

General exception.

Provided that this act shall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to his majesty; or to the keeping of gunpowder at any of his majesty's storehouses or magazines; or to hinder the trial of gunpowder by his majesty's officers; or to the keeping of gunpowder at the magazines now erected at *Barking Creek/mouth*, in the county of *Essex*, *Eyrth Level*, in the county of *Kent*, or the magazines, near *Liverpool*, or the city of *Bristol*; or to the carriage of gunpowder to or from the king's magazines, under a special order from the board of ordnance; or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be sent for the use of such forces or militia. *f.* 29.

Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder in such close decked vessels and in such manner as is herein-before directed, from any vessels lying below *Blackwall*, or from such magazines lying below *Blackwall*, and going to any place beyond sea or coastwise. *f.* 30.

[By 46 G. 3. c. 121. That part of 1 J. 2. c. 8. which prohibits the importation of gunpowder is repealed.]

Guns. See Game.

Habeas Corpus. See Bail.

Hackney coaches and chairs.

[9 An. c. 23. — 10 An. c. 19. *f.* 158. — 1 G. c. 57. *f.* 2, 3. 7. — 1 G. *ft.* 2. c. 57. *f.* 1, 2. — 4 G. 3. c. 36. — 7 G. 3. c. 44. *f.* 12, 13, 15, 16. 19. — 10 G. 3. c. 44. *f.* 5—8. — 11 G. 3. c. 24. *f.* 28. — 12 G. 3. c. 49. *f.* 1, 2. — 24 G. 3. *sess.* 2. c. 27. *f.* 1. 3. 7, 8. — 26 G. 3. c. 72. *f.* 3. — 32 G. 3. c. 62. *f.* 2, 3. — 39 & 40 G. 3. c. 47. *f.* 2—5. 11. — 42 G. 3. c. 78. — 48 G. 3. c. 87.]

THE

THE king may appoint persons, not exceeding five, to be Commissioners for regulating hackney coaches within the bills of morality. 9 *An. c. 23. f. 1.*

Which commissioners shall under hand and seal licence hackney coaches within the cities of *London* and *Westminster* and suburbs thereof, and other places within the bills of morality, not exceeding 1000 [and by 42 *G. 3. c. 78.* 100 additional]; and on every licence shall be reserved 5s. a week, [and by 24 *G. 3. sess. 2. c. 27. f. 1.* an additional duty of 5s. a week] to be paid monthly. 9 *An. c. 23. f. 2.* 11 *G. 3. c. 24. f. 28.*

And they shall also licence hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10s. a year, to be paid quarterly. 9 *An. c. 23. f. 3.* 10 *An. c. 19. f. 158.* 12 *G. c. 12. f. 15.*

Every coach and chair shall have a distinct mark on each side, and if any shall alter such mark, he shall forfeit 5l., half to the informer, and half to the king. 9 *An. c. 23. f. 4.*

The commissioners shall appoint persons to inspect licensed hackney coaches and the horses: such inspection to take place four times at least in each year, and also as often as commissioners shall appoint, the report of the same as to their state and condition to be made to the commissioners. The commissioners may suspend the licence where the coach shall be found defective as to repair, safety, or cleanliness, or the horses unfit or insufficient, till the same be rectified. 39 & 40 *G. 3. c. 47. f. 4.*

No person shall drive or let to hire any hackney coach without license; on pain of 5l.; nor shall carry any person for hire in a hackney chair, without license on pain of 40s. in like manner. 9 *An. c. 23. f. 4.*

No horse to be used with any hackney coach shall be under 14 hands high. *Id.*

By 48 *G. 3. c. 87.* The former fares on hackney coaches are repealed, and by schedules (A.) (B.) other fares are to be taken in lieu thereof.

By 48 *G. 3. c. 87. f. 1.* Hackney coachmen may demand and take for the hire of any hackney coach the rates and fares described in either of the schedules (A.) or (B.) to this act annexed, calculating either according to time or distance as such coachman may please.

By *f. 2.* The fares shall be calculated only by the hour or mile, and not by the day.

By *f. 3.* Reciting that whereas the period of sun-set has been liable to dispute, it is enacted, that hackney coachmen shall be compellable to go on every day of the week, after 8 in the evening between *Lady Day* and *Michaelmas Day*, and after 5 in the evening between *Michaelmas Day* and *Lady*

Day, the distances and under the circumstances mentioned in the 32 G. 3. c. 47. and the 39 & 40 G. 3. c. 47.

By *f. 4.* For every coach hired in *London, Westminster*, or the suburbs, or in *Southwark*, or any place adjoining thereto, where there is a regular continuation of carriage-way, pavement, or at any stand beyond such continuation, after 8 in the evening between *Lady Day* and *Michaelmas Day*, and after 5 in the evening between *Michaelmas Day* and *Lady Day*, and taken to and discharged at any place where there is not a regular continuation of carriage-way pavement; there shall be paid over and above the ordinary and established fare as aforesaid, the full fare back either to such standing, or to the nearest extremity of continued carriage-way pavement, at the option of the person discharging the coach.

And if the coach be hired to be driven into the country in the day-time, and there be discharged, there shall be paid for the return of the coach to the nearest extremity of, &c. if it were taken in *London*, &c. or the borough of *Southwark*, &c. where there is a regular continuation of carriage-way pavement from either of the said cities or borough; —or if taken at any place beyond such continuation, &c. then for its return to such latter place, over and above the fare in the schedules annexed, additionally, for 10 miles, 5*s.*; —for 8 miles, 4*s.*; —for 6 miles, 3*s.*; —and for 4 miles, 2*s.*; —and no allowance for any less distance of return than 4 miles.

Additional fares allowed according to the price of oats.

By 39 & 40 G. 3. *f. 2, 3.* When the average price of oats computed according to 31 G. 3. c. 30. shall exceed 25*s.* per quarter, the commissioners for licensing hackney coaches may allow additional fares to be taken, *viz.* 6*d.* on every 2*s.* fare: 1*s.* on every 4*s.* fare, and so 6*d.* additional on every additional 2*s.*, provided the coach goes or is kept to the full amount of the fare; and such additional rates may be continued till 30 days after oats are reduced to one guinea per quarter.

Limitation of distance.

Every licensed coachman, plying for hire within the cities of *London* and *Westminster* or the suburbs thereof, or elsewhere within the bills of mortality, shall be obliged and compellable, on every day of the week, at seasonable times, to go any where within the distance of ten miles from either of the said cities. 7 G. 3. c. 44. *f. 12.* 12 G. 3. c. 49. *f. 1.*

Plying for hire when returning to town.

By 48 G. 3. c. 87. *f. 5.* Every hackney coachman, discharged in the country, and plying for and picking up promiscuous passengers, thereby converting their hackney coaches into stages, shall for every such offence incur a penalty of not exceeding 3*l.* nor less than 20*s.*

By *f. 6.* No such coachman shall be compellable to carry more than four adult persons inside, and a servant outside,
at

at one time : — and shall have 1s. above the regular fare for every additional adult person over that number, and if he shall drive into the country, and there wait, and return with any additional adult person, whom he shall agree to carry, and shall carry, and after waiting return with, he shall have 1s. for going, and 1s. for returning, above his regular fare.

By *f. 7.* If directed to wait at places of public resort, he shall receive of those so directing him, a reasonable sum in hand above the fare for driving thither, the sum so received to be accounted for when such coach shall be finally discharged.

But no person, who shall regularly use such hackney coach as a *stage coach* to and from any of the towns or places in the neighbourhood of *London* or *Westminster*, shall be obliged to carry any fare out of the ordinary course of his stage work or duty ; provided that he do, by painting in legible characters on the door of such coach, or on a board to be affixed on such door, plainly denote and distinguish the same to be a stage coach to and from any such town or place. 12 G. 3. c. 49. *f. 2.*

Using a hackney coach as a stage coach.

The commissioners shall order the several persons who take out licenses for hackney coaches that they provide check strings or wire to be placed in such convenient part of every such coach as to the said commissioners shall seem meet ; and every hackney coachman, plying for hire without such check string or wire, shall forfeit 5s., to be recovered as other penalties by any law relating to hackney coaches. 11 G. 3. c. 28.

Drivers to have check strings.

By the 1 G. c. 57. *f. 2.* No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the liberties aforesaid, on pain of 5l. as for driving unlicensed. *f. 3.*

Mourning coaches.

If any person shall drive a mourning coach or hearse to a funeral within the cities of *London* or *Westminster* or the suburbs thereof, or elsewhere within the bills of mortality, or within five miles of *Temple Bar*, without having a number fixed on the fore standard, shewing it to be licensed, he shall forfeit 5l. And on information given to the commissioners, they may summon the driver thereof, and altho' no express hiring shall be proved, it shall be adjudged a driving for hire. 24 G. 3. *sess. 2. c. 27. f. 7.*

No person shall drive any cart, car, dray, or other such like carriage within the limits aforesaid, or within the borough of *Southwark*, except the owner thereof shall have entered his name and place of abode with the said commissioners ; and also caused his name, and the number of such carriage, to be put upon some conspicuous part thereof : And in case of neglect or refusal, every such owner or driver of such carriage,

Carts, &c. within the bills.

riage, so residing and driving within the limits aforesaid, shall be liable to all the penalties and forfeitures created by any laws now in being relative to the owners or drivers of such like carriages. *f. 8.*

But in the case of *R. v. Powell, H. 32 G. 3.* it was determined that the owner of a cart, who does not *reside* within the bills of mortality, or within 5 miles of *Temple Bar*, need not enter his name and place of abode with the commissioners of hackney coaches, or have his name, or any number upon the cart, though it be driven within those limits. *4 T. R. 572.*

Rates for chairs.

And a chairman may take for any distance not exceeding one mile, 12d.; for any distance above one mile and not exceeding one mile and four furlongs, 1s. 6d.; for every further distance not exceeding four furlongs, 6d.; and by the hour 18d. for the first hour, and 6d. for every half hour after. *7 G. 3. c. 44. f. 13.*

Bye-laws.

And the commissioners may make bye-laws, to bind all persons licensed, and the renters of such licenses, and the drivers. *9 An. c. 23. f. 16. 1 G. 3. c. 57. f. 1.*

The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them. *9 An. c. 23. f. 17.*

Drivers refusing to go, or overcharging.

If any hackney coachman shall refuse to go at or exact more for his hire than according to the above act or bye-laws, he shall forfeit a sum not exceeding 3l. nor under 10s. *1 G. 3. c. 57. f. 2.*

Coachmen compellable to go.

And every hackney coachman where coaches are standing shall be compellable to go with any person when desired, and on refusal (unless he prove being hired,) shall be liable to the like penalties as persons refusing to carry for hire, by any law now in being. *39 & 40 G. 3. c. 47. f. 5.*

Exactng more than their fare.

Hackney coachmen exacting more than their fare shall be liable to the penalties, and their fares shall be recoverable, as under former acts. *f. 11. 48 G. 3. c. 87. f. 11.*

Misbehaviour of coachmen or chairmen.

If any person who shall drive a coach or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20s. to the poor; and if he shall not be able or shall refuse to pay, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for seven days, and receive the public correction of the house before he be discharged. *9 An. c. 23. f. 44.*

And on misbehaviour of a coachman or chairman by abusive language, or otherwise, the commissioners may revoke his licence, or inflict on him a penalty, not exceeding 3l. to the

the poor; and on non-payment, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour for 30 days. 9 *An. c. 23. f. 49. 7 G. 3. c. 44. f. 16.*

In every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs shall be liable to be committed to prison, it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison as by any former act and for any time not exceeding one month, or to commit such offender to *Bridewell* or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house. 7 *G. 3. c. 44. f. 15.*

In all cases where they may commit offenders to *Bridewell* or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 *G. 3. c. 44. f. 5.*

If any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 *An. c. 23. f. 22.*

Persons refusing to pay.

By 48 *G. 3. c. 87. f. 8.* 'Whereas by the laws now in force, hackney coachmen are not obliged to go with persons desirous of hiring their coaches; and whereas they have been oftentimes improperly summoned for refusal;' it is enacted, that every hackney coachman who, shall in civil and explicit terms declare to any person desirous to engage his coach, either that he hath been at work 12 hours with his coach and horses, or that he is actually hired, and shall afterwards be summoned for refusal, and shall prove that he had been so at work, or so *bonâ fide* hired, and it shall not appear that he conducted himself improperly to the party summoning, he shall not be punished, but the commissioners for licensing hackney coaches before whom such complaint shall be heard, shall require the person summoning to compensate the coachman for loss of time in attending the office, not exceeding 5s. nor less than 3s.

If any hackney coachman or his renter shall be in arrear for any rent made payable by his license for any longer time than is expressed therein, the said commissioners may revoke such license, and levy the money upon the goods of either the owner or renter, in like manner and form as by any law now in being with respect to the owner. 26 *G. 3. c. 72. f. 3.*

Rents and penalties may be levied by distress.

The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days' notice they pay not the fine without such warrant;) and in default of distress, to be imprisoned till paid: and if any rent shall be unpaid for 14 days, the commissioners may withdraw the license. 9 *An. c. 23. f. 12.*

And moreover, the breach of the bye-laws and of these rules and orders may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners. 9 *An. c. 23. f. 17.* 1 *G. 2. c. 57. f. 7.* 4 *G. 3. c. 36.* 7 *G. 3. c. 44. f. 19.* 10 *G. 3. c. 44. f. 7.*

And every licensed person, who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10s. to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence. 10 *G. 3. c. 44. f. 6.*

If any owner of a licensed hackney coach shall refuse or neglect to appear with his driver before the commissioners upon the third summons left at his usual place of abode, the said commissioners may revoke such license, and license another person in his room. 24 *G. 3. sess. 2. c. 27. f. 3.*

All penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners within ten days after levying such penalty, on pain of 10l., half to the king, and half to him that shall sue. 10 *G. 3. c. 44. f. 8.*

And by 32 *G. 3. c. 62.* No person shall stand and ply for hire with any hackney coach within either *New or Old Bond Street*, in the parish of *St. George, Hanover Square*. And if any person shall drive, stand with, and ply for hire, with any such coach in either of the said streets; he shall on conviction, on the oath of one witness within seven days, either before the commissioners, or one justice, forfeit not exceeding 40s. nor less than 10s., half to the informer, and half to the poor of the said parish; which if not paid, such offender shall be committed to the house of correction to hard labour, not exceeding one month, nor less than seven days, unless such penalty be sooner paid. *f. 2, 3.*

[Note: there are several other regulations by 39 & 40 *G. 3. c. 47.* which are under the management of the commissioners for hackney coaches, and being local are foreign to this work.]

No coach to ply for hire in *New or Old Bond Street*.

In *Slater v. Swann*, *Raymond C. J.* said, if a hackney coach stand before a tradesman's door, and hinder customers; he may lawfully take hold of the horses and lead them away, and is not bound to take his remedy for damages. 2 *Str.* 872.

Coach before a tradesman's door.

[Sections 9 & 10 of 48 G. 3. c. 87. relate to numbered stage coaches plying in the streets, and to the number of their booking houses.]

48 G. 3. c. 87. Sched. (A.)

			mile.	s.	d.
For every distance within, and not exceeding	1	—	1	—	0
Above 1	mile	—	1½	—	6
—	1½	—	2	—	0
—	2	—	2½	—	0
—	2½	—	3	—	6
—	3	—	3½	—	0
—	3½	—	4	—	6
—	4	—	4½	—	6
—	4½	—	5	—	0
—	5	—	5½	—	6
—	6	—	6½	—	0
—	6½	—	7	—	6
—	7	—	7½	—	0
—	7½	—	8	—	6
—	8	—	8½	—	6
—	8½	—	9	—	0
—	9	—	9½	—	6
—	9½	—	10	—	0
—	10	—	10½	—	0
—	10½	—	11	—	6
—	11	—	11½	—	0
—	11½	—	12	—	0

And so for any further distance 6d. for every half mile, and an additional 6d. for every two miles completed.

And by Sched. (B.)

For every hackney coach, hired and taken for any time, shall be paid,

		hr.	min.	s.	d.
For any time within, and not exceeding	30	—	—	—	0
Above 30 minutes	0	45	—	—	6
hr. 45	1	0	—	—	0
1 0	1	20	—	—	0
1 20	1	40	—	—	0
1 40	2	0	—	—	0
2 0	2	20	—	—	0
2 20	2	40	—	—	0
2 40	3	0	—	—	0
3 0	3	20	—	—	0
3 20	3	40	—	—	0
3 40	4	0	—	—	0

And

And for any further time, after the rate of 6d. for every 15 minutes.

Hair powder.

[N. B. The manner of making hair powder, and the excise duty thereon: See title *Ortise*, (Starch) &c. And *Taxs.*]

Harbour filling up. See *Rivers and Navigation.*

Hares. See *Game.*

Harepipes. See *Game.*

Hats.

[24 G. 3. c. 51. *feff.* 2. *f.* 1—5. 7. — 24 G. 3. c. 21. *f.* 2. — 36 G. 3. c. 125. — 43 G. 3. c. 68. — 44 G. 3. c. 98.]

License for re-tailing.

BY 24 G. 3. c. 51. *feff.* 2. All retailers of hats commonly called *felt* or *wool*, *stuff* or *beaver* hats, or any *leather* or *japanned* hats, shall take out a license from the stamp officers, for which shall be paid, within the bills 4os., elsewhere 5s. which license shall be renewed annually ten days at least before the end of the year. *f.* 1, 2. 4.

Penalty.

And if any retailer shall sell any such hats without a license, he shall forfeit 50l. *f.* 3.

Who shall be deemed retailers.

Every person, who shall sell any less quantity than one dozen of hats at one time to any one person, shall be deemed a retailer. *f.* 7.

Certain words to be put up.

Every licensed retailer shall cause the words *Dealer in hats* by *retail* to be put up over the door, or in the front of his house or shop; on pain that if he sell any hat without fixing such notice, he shall forfeit 4os. *f.* 5.

If any unlicensed person shall put up these words, he shall forfeit 50l. *f.* 6.

For the duties on hats, and licenses to sell hats, see vol. 5. tit. *Stamps.*

Duties on hats are repealed by 51 G. 3. c. 70.

Importation and exportation.

By 43 G. 3. c. 68. (*Schedule A.*) For every hat made of or mixed with felt, hair, wool, or beaver imported, shall

be paid a duty of 1l. 1s. And there shall be allowed on exportation a drawback of 10s. 6d.

Any licensed person may export any number of hats, not less in quantity than [one dozen in one package, either lined or unlined, and if lined, then without being stamped, 36 G. 3. c. 125. f. 18.] upon giving notice to the nearest distributor of the stamps, who shall grant a certificate thereof. 24 G. 3. c. 51. *sess.* 2. f. 24.

And for the encouragement of the hat manufactory, it is enacted by the 24 G. 3. c. 21. *sess.* 2. that no hare skins, hare wool, coney wool, or undressed coney skins, shall be exported, or laden upon any horse, cart, or other carriage, or laid on board any ship or boat in order to be exported, on the penalty of 500l., and the same to be forfeited and every person aiding or assisting therein shall forfeit 40l. f. 1, 2.

Hare and coney skins not to be exported.

If any person shall dye any such skins, or shall be aiding and assisting therein, he shall forfeit 20l.: and such skins shall be seized, together with the machines and other utensils and apparatus used therein, and the same shall be forfeited. f. 3.

Not dyed.

And for the further encouragement of the hat manufactory all goats' hair or Turkey goats' wool may be imported duty free. f. 6.

Goats' wool.

All penalties by this act imposed shall be one moiety to his majesty; the other to the officer of the customs suing, and are to be recovered in the same manner as directed by the acts for preventing frauds in the revenues of the customs, and shall be applied half to the king and half to him that shall sue, and all actions, &c. shall be within the county where the offence was committed. f. 4, 5.

Hawkers and pedlars.

[9 & 10 W. c. 27. f. 9. — 3 & 4 An. c. 4. f. 4. — 9 G. 2. c. 35. f. 20. — 7 G. 3. c. 43. f. 7, 8, 9. — 29 G. 3. c. 26. — 50 G. 3. c. 41. — 52 G. 3. c. 108.]

BY 50 G. 3. c. 41. f. 1. The 9 & 10 W. c. 27. and all acts for continuing, altering, or regulating the duties thereby imposed, as far only as they relate to such continuance, alteration, or regulation, and all powers, &c. relating to the collection of the same duties are repealed, excepting as to arrears and penalties already incurred. But no act already repealed by the acts by this act repealed, shall by this act be revived.

By

By *f. 2.* Licenses already granted shall be in force till *Sept. 1. 1810*; and all future licenses shall continue till *Aug. 1.* next after the dates of the licenses.

f. 3. & 8. transfers the licensing from the former commissioners to the commissioners for the licensing and regulating hackney coaches.

By *f. 9.* The licenses shall be annual, and by *f. 10.* the duties payable by such hawkers, &c. shall be paid at the time of receiving the license.

Certificate to be produced.

And before any person shall be licensed, he shall produce to the commissioners or their deputies a certificate signed by one clergyman officiating within the parish or place where he usually resides and by two reputable inhabitants of the same, attesting that such person is of good character and reputation, and fit to be licensed. 50 G. 3. c. 41. *f. 12.*

And such certificate shall be in the form, or to the effect following :

We A. B. the Minister, and C. D. and E. F. being two householders residing at ——— in the parish (otherwise, or as the case may be) of ——— in the county of ——— do hereby certify that G. H. hath been known to us for the space of ——— years last past, and during all that time hath usually resided in the said parish (or as the case may be) of ——— and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. Dated, &c.

A. B. Minister.

C. D. }
E. F. } Householders.

Ib. f. 13.

License duty.

By the 50 G. 3. c. 41. *f. 6.* There shall be paid by every hawker, pedlar, petty chapman, and every other trading person, going from town to town, or to other men's houses, and travelling either on foot, or with horse, horses, or otherwise, within the kingdom of *England, Wales,* and town of *Berwick-on-Tweed* (except as therein after excepted), carrying to sell, or exposing to sale, any goods, wares, or merchandize, a duty of 4*l.* for each year.

And every person so travelling with a horse, ass, or mule, or other beast bearing or drawing burthen, the sum of 4*l.* yearly, for each beast he shall so travel with, over and above the said first mentioned duty of 4*l.*

Duty to be paid on taking out the license.

And every such hawker, pedlar, or other person, shall at the time of receiving his license, which is to be subscribed by two of the commissioners for licensing hawkers and pedlars, pay the said duties.

Trading persons going from town to town (upon 9 & 10 W. 3.) T. 31 G. 2. *Rex v. Little.* The conviction being removed by

by *certiorari* set forth that one *Thomas Preston*, gentleman, came before the justice and informed him that the defendant *Thomas Little*, in the parish of *St. Mary* in the city and county of the city of *Litchfield*, was found offering to sale silk handkerchiefs, and trading as a hawker, pedlar, or petty chapman; and that the said *Thomas Little* did not, although required so to do, produce any license as the law in that case directs; that the said *Thomas Little*, being brought before the justice doth confess that he the said *Thomas Little* did offer to sell silk handkerchiefs to the said *Thomas Preston* in such manner as is mentioned in the aforesaid information; and that he had no license for selling thereof: Whereupon the justice doth adjudge that the said *Thomas Little* is an hawker within the true intent and meaning of the statute in that case made, and is guilty of the offence in the said information laid to his charge. — It was moved to quash this conviction, upon two exceptions; 1. With respect to the person; that he is not brought within the description of the acts, as going from town to town, and travelling on foot, or with horse, horses, or otherwise; but he is only generally described to be a person that traded as an hawker and pedlar, and offered to sell a parcel of silk handkerchiefs to the informer. 2. With respect to the offence; the evidence is the defendant's own confession; and the confession extends no farther than barely to the simple fact of offering to sale silk handkerchiefs in such manner as charged upon him. — By *L. Mansfield* Ch. J. A single act of selling a parcel of silk handkerchiefs to a particular person is not a proof that he was such a hawker, pedlar, or petty chapman, as ought to take out a license, by virtue of the acts of parliament. It is certainly of the essence of the crime of not producing a license, that he must be such a person as ought to take out a license. And the confession is only of the fact, that he offered to sell the handkerchiefs to *Thomas Preston*; not that he traded as an hawker. Convictions ought to be taken strictly; and it is reasonable that they should be so, because they must be taken to be true against the defendant. I do not say, that it is necessary to define exactly what a hawker, pedlar, or petty chapman is. But it is necessary to allege and shew that he sold the goods, or traded as one. — *Mr. J. Denison* concurred, for the same reasons; and thought the material averment to be here wanting; it not being averred that he was such a hawker, pedlar, or petty chapman, as ought to take out a license. — By *Mr. J. Wilmot* (*Mr. J. Foster* being absent): I am clearly of the same opinion. For certainly a man may sell goods as a hawker, pedlar, or petty chapman, without being such a person as is obliged to take out a license:

cense : and if he is not obliged to take out a license, most undoubtedly he ought not to be convicted in a penalty for not producing one. Now here it appears to me that the justice hath convicted the man of an offence, of which he hath not proved him to be guilty. And by the court unanimously, the conviction was quashed. 1 *Bur.* 6-9.

No wholesale trader to be deemed a hawker, nor shall he or his servants be liable to penalties for going from house to house selling goods by wholesale only.

By the 52 G. 3. c. 108. no person being a wholesale trader in lace, in woollen, linen, silk, cotton, or mixed goods, or any of the goods, wares, or manufactures of *Great Britain*, and selling the same by wholesale shall be deemed or taken to be a hawker, pedlar, or petty chapman within the intent and meaning of the 50 G. 3. c. 41. or any other act relative to hawkers, pedlars, or petty chapmen, or of any or either of them ; and that every such person, his, her, or their apprentices, servants, or agents selling by wholesale only, shall go from house to house and from shop to shop to any of their customers who sell again by wholesale or retail without being subject or liable to any of the penalties or forfeitures contained in the said 50 G. 3. or in any of the said acts touching hawkers, pedlars and petty chapmen.

Nor shall persons be prohibited from carrying about coals in carts, &c.

Nothing in the said 50 G. 3. c. 41. shall extend to prohibit any person from carrying about coals in carts, or on horses, mules, and asses, and selling the same by retail, or subject any such person to any duty, penalty, or forfeiture imposed by the said 50 G. 3. c. 41.

Spirituous liquors and teas.

Exposing to sale any goods, wares, or merchandizes.] But by the 9 G. 2. c. 35. he shall not, by virtue of such license, sell or offer to sell any *tea, brandy, or other spirits* (although he have a permit for the same) ; but the person to whom the same shall be so offered may stop, arrest, seize, detain, and carry the same to the next customs or excise warehouse, and may seize the offender and carry him before a justice, to be by him imprisoned and prosecuted for the penalties and forfeitures incurred for selling or offering the same to sale without license. *f.* 20.

Foreign goods.

And by the 7 G. 3. c. 43. if any *foreign cambrick or French lawn* shall be found in the possession of any hawker, pedlar, or petty chapman, he shall forfeit the same, and also all the other goods in the pack, where the same shall be found, and shall also be adjudged to have forfeited his license ; half the said goods to be disposed to the use of the king, and half to the officer who shall sue for the same ; and if no officer shall sue within one month, then any other person may sue. *f.* 7, 8, 9.

Packs, &c. to be marked with certain words.

Every such licensed person trading with or under colour of such license shall cause to be written, painted, or printed, in large legible *Roman* capitals upon the most conspicuous part of every pack, box, bag, trunk, case, cart, waggon, or other

other vehicle of conveyance in which he shall carry his goods, &c. and of every room and shop in which he shall so trade, and likewise upon every hand-bill, or advertisement which he shall give out, distribute, or publish, the words LICENSED HAWKER, together with the number, name, or marks of distinction so written or printed on his license, on pain of forfeiting 10l. 50 G. 3. c. 41. s. 14.

If any person not licensed as aforesaid shall write, paint, or print, or cause to be so written, painted, or printed, or kept, or continue the same upon any pack, bag, box, trunk, case, cart, waggon, or other vehicle or conveyance for any goods, &c. or in any room or shop in which he shall sell, expose to sale, or keep for sale any goods, &c. the words LICENSED HAWKER, or LICENSED PEDLAR, or words to that effect, he shall forfeit 10l. s. 15.

Unlicensed persons marking their packs, &c.

If any such hawker, &c. shall after the 1st Aug. 1810, be convicted of knowingly dealing in or selling any kind of smuggled, contraband, or prohibited goods, &c. or which have been fraudulently or dishonestly procured, either by themselves or through the medium of others with their knowledge; he shall from and after such conviction forfeit his license, and be incapable of obtaining or holding any new one, and that over and above all other forfeitures and incapacities fines and penalties to which he may be subject for such illicit trading. s. 16.

Selling smuggled goods.

If any such person shall trade as aforesaid without or contrary or otherwise than as is allowed by such license, he shall forfeit 10l. to be applied as hereinafter mentioned; or if on demand made by any person thereto authorized by the said commissioners, or any two, and producing such authority to such person, or by any justice of the peace, mayor, constable, or other peace officer of any county, riding, division, town corporate, borough, or place where he shall so trade, or by any officer of the customs or excise, or by any person to whom he shall offer goods to sale, he shall refuse to produce and shew, or shall not have his license ready to produce and shew, he shall forfeit 10l. to be recovered and applied as last aforesaid; and for non-payment thereof shall suffer as a common vagrant, and be committed to the house of correction. s. 17.

Trading without a license or refusing to shew it.

Any person may seize and detain any such hawker, &c. found trading without a license, or who, being trading, shall refuse or neglect to produce the same according to this act, after being required so to do, for a reasonable time, in order to give notice to a constable or other peace officer, who shall carry such person so seized (unless he in the meantime produce his license) before a justice where the offence shall be committed, who shall, on confession, or proof on oath by one witness

Hawkers, &c. refusing to produce their licences may be detained.

witness of his having so traded, and not produced his license, convict the offender so trading without a license, and thereupon by warrant cause the said sum of 40*l.* to be levied by distress and sale of the goods, wares, or merchandize of such offender, or of the goods (a) [with] which he is so found trading, rendering the overplus after deducting charges of the distress; and in the meantime shall commit him to the common gaol or house of correction, there to remain until the said penalties and forfeitures and reasonable charges of taking the said distress shall be levied by such distress and sale, or until the same shall be otherwise paid or satisfied by such offender. 50 G. 3. c. 41. s. 20.

No hawker, pedlar, petty chapman, or any other trading person or persons, going from town to town or to other men's houses, and travelling either on foot or with horse or horses, either by opening a room or shop and exposing to sale any goods, wares, or merchandize by retail, in any town, parish, or place, such person not being a householder there, or the same not being an usual place of his abode, or by any other means or device shall vend or sell, either by himself, or by any auctioneer, licensed, or not, broker, appraiser, agent, servant, or other person on his behalf, any goods, wares, or merchandize by outcry, knocking down of hammer, candle, lot, parcel, or any other mode of sale at auction, or whereby the best, or highest bidder is or shall be deemed to be the purchaser under the penalty of 5*l.* 50 G. 3. c. 41. s. 7.

No hawker, pedlar, petty chapman, or any other trading person or persons, going from town to town or to other men's houses, travelling either on foot or with horse or horses, or opening a room or shop and exposing to sale any goods, wares, or merchandizes by retail in any town, parish, or place, such person not being a householder there, or the same not being an usual place of his abode, or of his carrying on business shall vend, sell, or expose to sale any goods, wares, or merchandize in any city or market town, or within the distance of two miles from the middle of the most central market place of any such city or market town by the most usual or common roads under the penalty of 1*l.* 29 G. 3. c. 26. s. 16.

Provided that nothing herein contained shall extend to hinder any person from selling or exposing to sale any sorts of goods or merchandizes in any (b) [legally established] public mart, market, or fair; but that such person may do therein

(a) "*With*," not in the act; but the sense requires it. K.

(b) These words are only in 50 G. 3. c. 41. s. 5.

as he lawfully might have done before the making of the said act. *f. 17. and 50 G. 3. c. 41. f. 5.*

Public market or fair] This only extends to sales in the public market places and on the days of market. And therefore if a hawker sell his goods in a part of a market town, not the open market place, though on a market day and during the market hours, he incurs the penalty of 10*l.* under the sixteenth section; he not being an householder there, &c. *R. v. Redfearne. 4 T. R. 274.*

If any person shall let out to hire or lend any license to him granted, or shall trade with or under colour of any license granted to any other person, or in which his own real name shall not be inserted, as the name of the person to whom the same is granted, he shall forfeit 40*l.* And if any person shall be convicted of lending such license, the same shall be forfeited and void, and he shall be utterly incapable of having any license again granted. *29 G. 3. c. 26. f. 13. 3 & 4 An. c. 4. f. 4. 50 G. 3. c. 41. f. 19.*

Lending or borrowing licences.

But by *50 G. 3. c. 41. f. 19.* It is further provided that this shall not subject to any penalty any servant travelling for a licensed master, with the licence of such master, and for his benefit; or any licensed master sending such servant to travel with such licence.

If any person shall forge or counterfeit, or travel with produce or shew for any of the purposes aforesaid a forged or counterfeit license; he shall for every such offence forfeit 300*l.* to be recovered and applied as hereinafter directed. *50 G. 3. c. 41. f. 19.*

Counterfeiting licences.

But nothing herein shall prohibit any person from selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacs, or other printed papers licensed by authority, or any fish, fruits, or victuals, nor to hinder any person who is the real worker or maker of any goods, wares, or manufactures of *Great Britain*, or his children, apprentices, known agents, or servants usually residing with such real worker or maker only, from carrying abroad or exposing to sale and selling by retail or otherwise any of the said goods and wares of his own making, in any mart, market, fair (a), and in every city, borough, town corporate, and market town; nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles,

Exceptions.

(a) In the *9. & 10 W. c. 27. f. 9.* before the word "*mart*," is the word "*public*;" and after the word "*fair*" are the words "*or elsewhere*:" and there is no mention of the words ending with "*market town*," as in *50 G. 3. c. 41. f. 23.* — And see the general provisions *ante*, of *50 G. 3. c. 41. f. 1. and 31. K.*

tubs, household goods, or harness, from going about and carrying with him proper materials for mending the same. 9 & 10 W. c. 27. s. 9. 29 G. 3. c. 26. s. 21. 50 G. 3. c. 41. s. 23.

Selling by
wholesale.

Provided, that no person being a wholesale trader in *English* bone lace, in woollen, linen, silk, cotton, or mixed goods, or any goods, wares, or manufactures of *Great Britain*, and selling the same by *wholesale*, shall be deemed a hawker, pedlar, or petty chapman; but that such persons, their children, apprentices, servants, or agents, selling by wholesale only, may go from house to house and from shop to shop to any customer who sells again, without being subject to any penalty. 29 G. 3. c. 26. s. 20.

May set up
trades.

Any person, who on the 1st day of *May* 1810, was duly licensed to trade as a hawker and pedlar, may set up, use, or exercise any trade, craft, mystery, or occupation, or set any other person to work in any place where he shall be a resident inhabitant, although neither he nor such person have been brought up in such trade, &c. seven years as an apprentice, notwithstanding any thing contained in an act of 5 *Ed.* to the contrary; and if any person, their wives or children shall be prosecuted for using such trade in any city, town, or place, having been duly licensed as aforesaid, he may plead the general issue, and have double costs. 50 G. 3. c. 41. s. 22.

Are not remove-
able to their
settlements.

No such persons, their wives or children, during the time they shall use and exercise such trade in any parish or place, shall be removeable therefrom to their place of settlement, until they shall become *actually chargeable* to such parish or place. *Id.*

Penalties how to
be recovered.

All pecuniary penalties above 20l. shall be sued for in the courts at *Westminster*: If not exceeding 20l. may be recovered before any justice for the county, city, town, or place where the offence is committed, on proof thereof by confession or oath of one witness; and on non-payment, the same shall be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which he shall be found trading; the overplus, after deducting expences of distress and sale, and the penalty, so rendered to the owner; and such offender shall be committed to prison until such penalty and charges of taking such distress be levied by such distress and sale, or until the same be paid and satisfied. And such justice may by warrant cause such offender to be brought before him to answer to any charge or complaint for such penalty, and may commit him to prison as aforesaid until the hearing thereof, unless he enter into recognizance with two sureties to appear at such hearing; one moiety of the penalty to be to his majesty, the other to the informer. 29 G. 3. c. 26. s. 22, 23. 50 G. 3. c. 41. s. 24, 25.

Provided that no person committed to any gaol or house of correction for any offence against this act shall be detained therein for any longer time than three months. *Id.* *f.* 24. & *Id.* *f.* 26.

Not to be imprisoned above three months.

Every justice before whom any person shall have been convicted under the repealed acts, or shall be under this act, shall receive his majesty's share of the penalty, and shall pay the same at the next sessions to the clerk of the peace or other like officer, who shall forthwith remit the same without fee to the commissioners for licensing hawkers, &c., or such person as they shall appoint; and such justice shall, on making such payment, transmit a schedule to the said commissioners or person by them appointed of the names of the person so convicted, the day on which they were convicted, their respective offences, and the sums paid, arranged according to the several counties within which such convictions were made. *f.* 28.

Justices to receive penalties, &c.

Provided always, that if any person shall find himself aggrieved by the judgment of any such justice, he may, on entering into recognizance with two sureties to the amount of the penalty and forfeiture together with a sum which in the judgment of such justice shall be adequate to the costs which may be awarded, conditioned to pay the same in case such judgment be affirmed, appeal to the next general sessions for the county or place, (a) [who] may summon, examine witnesses on oath and finally hear and determine the same; or at their discretion may state the facts specially for the determination of the king's bench thereon. And if the judgment of such justice be affirmed, such justices or court of king's bench may award such costs occasioned by such appeal as to them shall seem meet. *Id.* *f.* 25. & *Id.* *f.* 27.

Appeal.

And the conviction may be in the form or to the effect following, without stating the evidence and without alledging more than the substance of the offence, in all cases where any such justice may convict by virtue of this act.

Conviction.

BE it remembered, that on the — day of — in the year of our Lord — at — in the county of — A. B. came before me C. D. one of his majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and informed me that E. F. of — in the county of — (here set forth the offence for which the information is laid) whereupon the said E. F. being duly summoned to answer the said charge appeared before me [and having heard the charge contained in the said information,] acknowledged and voluntarily confessed the

(a) "Who," is not in the 50 G. 3. c. 41. *f.* 27. K.

facts therein stated to be true, but in his defence alledged (here set forth the substance of the defence); or voluntarily confessed the said charge to be true, or did not make any defence against the said charge, whereupon the same was fully proved on the oath of G. H. a credible witness; or said that he was not guilty of the said offence, whereupon the same was fully proved on the oath of A. W. a credible witness, [or as the case may be], or did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of G. H. a credible witness (or as the case may be); and therefore it manifestly appearing to me that the said A. O. is guilty of the offence charged in the said information, I do hereby convict him of the said offence, and do adjudge that he hath forfeited the sum of ——— (or his license and the sum of ———) of lawful money of Great Britain, to be distributed as the law directs, according to the form of the statute in such case made and provided. Given, &c. 50 G. 3. c. 41. s. 28. & 29 G. 3. c. 26.

And no conviction upon this act shall be removed into any other court, save upon appeal as aforesaid. *s. 26, 27. 50 G. 3. c. 41. s. 29.*

Constables to be assisting.

If any constable or other peace officer shall refuse or neglect, upon due notice, or on his own view, to aid in the execution thereof, being thereunto required, and shall be thereof convicted on confession, or on the oath of one witness, before one justice where the offence shall be committed, he shall forfeit 10l. to be recovered and applied as in this act after mentioned. *50 G. 3. c. 41. s. 21.*

Witnesses not appearing, or refusing to be sworn.

Witnesses not appearing having been duly summoned, without reasonable cause to be allowed by such justice or justices, or refusing to be examined upon oath, shall forfeit 10l. *s. 30. & 50 G. 3. c. 41. s. 32.*

Application of penalties.

All penalties by this act imposed shall be distributed half to the king and half to him that shall sue. *29 G. 3. c. 26. 10l. s. 22, 23.*

Justices shall transmit to the commissioners for licensing hawkers accounts of convictions, and of the penalties belonging to his majesty, and pay over the money in their hands to the clerk of the peace, who shall remit the same to the commissioners, &c.

By *50 G. 3. c. 41. s. 30.* Every justice before whom any person hath already been convicted of any offence under or by virtue of any of the acts hereby repealed, and having received for his majesty's use any part or share of any penalty levied, inflicted, or paid under or by virtue of such conviction for which he has not already accounted, shall within six months after the passing of this act transmit to the commissioners for licensing hawkers, pedlars, and petty chapmen, a schedule or schedules containing the names of the persons so convicted, the day on which they were convicted, their respective offences, and the respective sums now remaining in the hands of such justice for his majesty's use, which were levied or paid under or by virtue of such convictions, arranged according to the several counties, ridings, or places within

within which such convictions have been made, and every justice before whom any such person shall be convicted of any offence under this act, shall take and receive his majesty's share of the penalty, and every such justice, his executors or administrators, shall pay all such sums of money as shall be remaining in his or their hands at the time of the passing of this act, at the next general quarter sessions of the peace after the passing of this act, and all such sums which he shall so take upon any conviction under this act as aforesaid, at the next general sessions of the peace after he shall have so taken the same, into the hands of the clerk of the peace or other such like officer for the county, riding, or place, within which such conviction shall have been made, who is hereby directed to remit the same forthwith, without fee or reward, to the said commissioners for licensing hawkers, pedlars, and petty chapmen, or to such person or persons as the greatest part of them shall appoint; and every justice, &c. shall immediately on such payment made to any clerk of the peace or other such officer, transmit a like schedule to the said commissioners, or to such person or persons as they or the greater part of them shall appoint.

Let out to hire or lend] *Hodgson* q. t. v. *Flower*, M. 50 G. 3. This was an action of debt on 29 G. 3. c. 26. s. 13. to recover the penalty of 40l. from the defendant for *letting out to hire and lending* his license to one *B. W.* — The second count was for unlawfully *lending* the license. — It appeared that *W.* was the defendant's servant, and was in the habit of going about selling coals for his master, and received 4s. 6d. a chaldron upon the coals he sold. — And it was held by Lord *Ellenborough* C. J. that no forfeiture was incurred by the defendant, and that an action could not be maintained against a master for sending out a servant with a license. — And he cited in point *Chamberlain* q. t. v. *Hill*, H. T. 44 G. 3. 2 *Campbell's Reports* at *Nisi Prius*, 292.

Hawks and Hawking. See Game.

Hay.

THE 2 *W. sess.* 2. c. 8. and 8 & 9 *W. c.* 17. and 31 G. 2. c. 40. containing regulations concerning the selling of hay, straw, and cattle, within the bills of mortality, are by 36 G. 3. c. 88. repealed, so far as relates to hay and straw, but are not general enough to be here inserted at large.

Hedge breaking. See Wood.

Hemp.

Watering hemp
or flax.

BY the 33 *H. 8. c. 17.* It shall not be lawful to any person to water any hemp or flax in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20s., half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day.

Bounty for the
encouragement
of the growth of
hemp and flax.

By 26 *G. 3. c. 43.* For the encouragement of the growth of hemp and flax in *England*, yearly a sum not exceeding (6335*l.* 15*s.* 27 *G. 3. c. 13. f. 65.*) at the rate of 3*d.* *per* stone of hemp, and 4*d.* *per* stone of flax, was directed to be raised in the year 1787, and for every subsequent year, to be paid to the grower, or other person who breaks or properly prepares the same for market. And certain regulations relative thereto were placed under the cognizance of the justices at sessions. But the act was to continue in force for seven years only; and from thence to the end of the next session of parliament.

Herring Fishery. See *Fisheries.*

Hides and Skins. See *Leather.*

High constable. See *Constable.*

High treason. See *Treason.*

Highways in general.

NOTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways, are comprehended under this title. County bridges are treated of under title *Bridges.*

For the ordering of streets in cities and market towns, see title *Stabengers.*

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Con-

I. Concerning the highways in general.

Sect. I. *What is a highway.*

II. *Of the special sessions to be holden for the highways.*

[13 G. 3. c. 78. f. 1. 71.]

III. *Appointment of surveyors.*

[Id. f. 1. 4, 5—23. 48. 53, 54. 70.]

IV. *Who are liable to repair, and in what proportion.*

[Id. f. 26. — 26 G. 3. c. 107. — 34 G. 3. c. 74. f. 2. 4, 5. 7.]

V. *Composition instead of labour.*

[13 G. 3. c. 78. f. 40—42. 44. — 34 G. 3. c. 74. f. 3. 6. — 44 G. 3. c. 52. f. 2.]

VI. *Working.*

[13 G. 3. c. 78. f. 25. 37. 43. — 34 G. 3. c. 74. f. 2.]

VII. *Materials how to be procured.*

[13 G. 3. c. 78. f. 21. 27—29. 31—33.]

VIII. *Removing obstructions and annoyances; carts, &c.*

[1 G. ft. 2. c. 57. f. 8. — 24 G. 2. c. 43. f. 7—9. 11—15. — 13 G. 3. c. 78. f. 6. — 12. 14. 59, 60. 62.]

IX. *Direction posts, blocks, mile stones, watermarks, and battlements of bridges.*

[Id. f. 26. 52.]

X. *Breadth of wheels, and number of horses.*

[6 G. c. 6. — 18 G. 2. c. 33. — 13 G. 3. c. 78. f. 55—58.]

XI. *Breadth, widening, changing, and diverting highways.*

[13 G. 3. c. 78. f. 15—21.]

XII. *Affessments, how to be made.*

[13 G. 3. c. 78. f. 30. 45, 46.]

XIII. *Penalty of hindering the execution.*

[13 G. 3. c. 78. f. 71.]

XIV. *Penalty of the surveyor for neglect of duty.*

[13 G. 3. c. 78. f. 50.]

XV. *Surveyor's account.*

[13 G. 3. c. 78. f. 48.]

XVI. *Pre-*

XVI. *Presentment or indictment of highways in general.*

[13 G. 3. c. 78. f. 64—66.]

XVII. *Presentment by a justice.*

[30 G. 3. c. 78. f. 24.]

XVIII. *Levying assessments, fines, and forfeitures.*

[13 G. 3. c. 78. f. 47. 67, 68. 72—80.]

XIX. *Appeal.*

[13 G. 3. c. 78. f. 80.]

XX. *Limitation of actions.*

[13 G. 3. c. 78. f. 81.]

I, *What is a highway.*

See Pr. St. 20 Geo 3 c. 1 Sec 12

Three kinds of highways.

There are three kinds of ways; (1.) A footway; (2.) A foot and horse way, which is also a pack or drift way; (3.) A foot, horse, and cart way. 1 *Inst.* 56.

Difference between a highway and a private way.

It seemeth that any one of the said ways, which is common to all the king's people, whether it lead directly to a market town, or only from town to town, and do not terminate there but is also a thoroughfare to other towns, may properly be called a highway. 1 *Haw. c. 76. f. 1.*

For there were highways before there were market towns. And if it were essential to the constituting of a highway that it should expressly lead from market town to market town, then it would follow that the lord of a market, by forfeiting or surrendering his charter, might cause that to cease to be a highway which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby consequentially change the way to it from a private way into a highway.

And therefore, the distinction which is taken in some books, concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of whom, as it seems, may have an action on the case for a nuisance therein. *Id.*

So, if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before. *Litt. R.* 267.

So if one grant me a way, and afterwards dig trenches in it to my hindrance, I may fill them up again. *Godb.* 53.

But if a way which a man has become not passable, or become very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. *Godb.* 52. But in such case he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

T. 21 G. 3. Taylor v. Whitehead. This was an action of trespass for breaking and entering the plaintiff's close. The defendant (*inter alia*) pleaded a right of way by prescription through a lane of the plaintiff's, contiguous to the place in question, to *Otley-bridge* on the river *Wharfe*, in *Yorkshire*, and that the tenants and occupiers of those lands were from time to time whereof, &c. by reason of their tenure bound to repair the lane, and the banks thereof next to the river; that at several times the lane was out of repair and overflowed with water, so that the defendant could not use the way without imminent danger of the loss of his life and goods; and that he necessarily went over the lands adjoining as near to the said way as he possibly could, as it was lawful for him to do, &c. — This cause was tried before *L. Loughborough* at *York* in 1780, and afterwards argued in the court of king's bench. — By *L. Mansfield Ch. J.* This question is upon the grant of this way. Now it is not laid to be a grant of a way generally over the land; but of a precise specific way. The grantor says, you may go in this particular line, but I do not give you a right to go either on the right or left. I entirely agree with my brother *Walker*, that by common law "he who hath the use of any thing ought "to repair it." The grantor may bind himself, but here he has not done it. He has not undertaken to provide against the overflowing of the river; and, for aught that appears, that may have happened by the neglect of the defendant. Highways are governed by a different principle. They are for the public service, and if the usual tract be impassable, it is for the general good that people should be entitled to pass in another line. And this was clear law established by a number of cases, particularly that of *Abfor v. French* (*),

Nuisance in, and repairs of, private ways.

Where a prescription way is out of repair, the passengers have no right to go upon the adjacent ground.

Otherwise as to highways.

(*) *B. R. M. 30 Car. 2. 2 Show. 21. S. C. Lev. 234.*

and *Hena's* case (*), that where a common highway is out of repair by the overflowing of a river or any other cause, passengers have a right to go upon the adjacent ground. So if the water impair the banks of a navigable river, (which is indeed considered as a highway), it is justifiable to go upon the nearest part of the field next adjoining (†). *Doug.* 716.

How far outlets are part of the highway.

It hath been holden that if there be an highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be soundrous, the king's subjects may justify going upon the corn. 1 *Haw. c.* 76. *f.* 2.

How far a river may be an highway. To whom the freehold of an highway belongeth.

In books of the best authority a river common to all men is called an highway. *Ib.* *f.* 1.

The freehold of the highway is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 *Inst.* 705.

The king has nothing but the passage for himself and his people, for the freehold and all profits belong to the owner of the soil, and all the trees upon it, and mines under it, which may be extremely valuable. 1 *Burr.* 143.

What is a dedication to the public.

H. 8 G. 2. Sir *John Lade v. Shepherd.* Upon trial of an action of trespass, a case was made, that the place where the supposed trespass was committed was formerly the property of the plaintiff, who some years since built a street upon it, which has ever since been used as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. It was insisted for the defendant that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore however he might be liable to an indictment for a nuisance, yet the plaintiff could not sue him as for a trespass on his private property. — But by the court: It is certainly a dedication to the public, so far as the public has occasion for it, which is only for a right of passage: But it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment. 2 *Str.* 1004.

The *Trustees of Rugby Charity v. Merryweather*, before Lord *Kenyon* at the sittings in *Middlesex*, 26th May 1790. —

(*) Sir *Wm. Jones*, 296.

(†) 1 *L. Raym.* 725.

This was an action to try a right of way in dispute between the plaintiffs and the governors of the foundling hospital. — The way in question was *Lamb's Conduit Street*. The evidence was, that the right of soil was clearly in the plaintiffs; but there had been a common street there, though no thoroughfare, by reason of the houses at the end, for above 50 years. The plaintiffs accounted for not having put up a bar, or the like, to denote that the way was not relinquished to the public at large, by shewing that the *locus in quo* had been in lease for a long term up to the year 1780. Lord *Kenyon* asked what the plaintiffs had to say to the time from 1780 till about two years ago, when they had put up a bar. It was answered that they had been in treaty with the foundling hospital, respecting the allowing them a right of way, which was finally broken off. — Lord *K.* If this rested solely on the ground of a question of right between the plaintiffs and the foundling hospital, the former would certainly not have been barred by the time which elapsed from 1780 till the obstruction was put up, pending the treaty between them: but during all that time they permitted the public at large to have the free use of this way without any impediment whatsoever; and therefore it is now too late to assert the right, for this is quite a sufficient time for presuming a dereliction of the way to the public. In a great case (which was much contested) six years was held sufficient. And as to this not being a thoroughfare, that can make no difference. The Duke of *Bedford* preserves his right in *Southampton Street*, *Covent Garden*, by a bar across the street, which is shut at pleasure, and shews the limited right of the public. The jury found for the defendant, on the issue on the common highway. 11 *E. R.* 375. (n.)

And in *R. v. Lloyd*, *H.* 48 G. 3. which was an indictment for obstructing a highway, it was said by Lord *Ellenborough* C. J. that although a place be not a thoroughfare, yet if the owner of the soil throw open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public, and *that* although the passage were originally intended for private convenience, when the public have been long allowed to use it without interruption. 1 *Campbell's Reports* 260.

In *Lethbridge v. Winter*, *Somerset* spring assizes 1808. Trespass was brought for entering plaintiff's close and pulling down a gate. — Plea, That it was a public footway, and the gate wrongfully erected across the same. — Evidence, that the gate had been recently put up in a place where a similar gate had formerly stood, but where for the last 12 years

Surveyors.

years there had been none. It was contended for the defendant that from suffering a gate to be down so long, and permitting the public to use the way without obstruction for so many years, the plaintiff and those under whom he claimed must be considered as having completely dedicated the way to the public, and that the gate could not be replaced. Under the direction of the judge a verdict was found for the plaintiff, and the court of K. B. refused a rule nisi to set it aside. *Ib. (n.)*

And in *Roberts v. Karr*, *Kingston Lent* assizes, 1808, *Heath J.* also decided the same point, viz. that the originally establishing a bar or obstruction rebuts the presumption of a dedication to the public, though it have been down for some time. *Ib.*

He also said that there could not be a partial dedication to the public.

II. Of the special sessions to be holden for the highways.

The justices shall hold a special sessions for the highways in the week next after the *Michaelmas* general quarter sessions yearly. 13 G. 3. c. 78. s. 1.

Any two justices within their respective limits may from time to time, whenever they shall judge proper, hold a special sessions, and adjourn the same as they shall think fit; causing notice to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable or other proper officer. s. 61.

III. Appointment of surveyors.

Notice of the time and place of appointment.

The justices shall hold such *Michaelmas* special sessions as aforesaid, at such convenient place within their respective limits, as they in their discretion shall judge proper:

And shall give notice (A) of the time and place to the constables of the respective parishes, townships, or places, at least ten days before the holding of the said session. 13 G. 3. c. 78. s. 1.

Lists to be made.

On *Sept. 22*, yearly, unless that day be *Sunday*, and then on the day following, the constables, headboroughs, tithingmen, churchwardens, surveyor of the highways, and householders assessed to any parochial or public rate, shall assemble at the church or chapel, or if there be no church or chapel, then at the usual place of public meetings, at the hour of eleven in the forenoon; and the major part of them so assembled shall make a list of the names of at least ten persons living within such parish, township, or place, each of whom hath an estate in lands, tenements, or hereditaments lying

lying within such parish, &c. in his own right or in the right of his wife, of the value of 10l. by the year;—or a personal estate of the value of 100l.,—or occupier of a tenement of the yearly value of 30l.; and if there shall not be ten persons so qualified, they shall insert in such list the names of so many as are so qualified, together with the names of so many of the most sufficient and able inhabitants not so qualified as shall make up the number ten, if so many can be found; if not, so many as shall be there resident—to serve the office of surveyor of the highways. 13 G. 3. c. 78. s. 1.

Surveyors' appointment.

The constable, &c. shall, within three days after such meeting, transmit a duplicate (B) of such list to one of the justices of the county, &c. where such parish, &c. shall lie, living near the same. *Id.*

Duplicate to be transmitted to a justice.

And shall also, within three days after making the said list, give personal notices to, or cause notices in writing (C) to be left at the places of abode of the several persons contained in such list, informing them of their being so named; to the intent that they may severally appear before the justices at the said special sessions to accept such office, if they shall be appointed thereto, or to shew cause, if they have any, against their being so appointed. *Id.*

Notice to the persons in the list.

And shall also return and deliver the original list (B) to the justices at their said special sessions to be holden in the week next after the *Michaelmas* general quarter sessions. *Id.*

List returned to the special sessions.

And the justices then and there, from the said lists, according to their discretion, and the largeness of the parish, township, or place, shall by warrant under their hands and seals appoint (D) one, two, or more of such persons as aforesaid, if he or they shall in the opinion of such justices be qualified for the office of surveyor; if not, one, two, or more of the other substantial inhabitants, or occupiers of lands, tenements, woods, tithes, or hereditaments within such parish, township, or place, living within three miles thereof, and within the same county, fit and proper to serve the office, if any such can be found. *Id.*

Appointment and charge.

R. v. the Justices of Denbyshire. T. T. 43 G. 3. A rule upon the defendants to shew cause why a writ of mandamus should not issue to them commanding them to appoint a surveyor of the highways for the said township for the residue of the present year. The affidavit upon which the rule was obtained stated, that from time immemorial a surveyor of the highways had been separately appointed for the said township, distinct from the parish of *Wrexham*. That the former surveyor was only appointed for the year ending at *Michaelmas* last, and that pursuant to the stat. 13 G. 3. c. 78. the inhabitants met on the 22d of September for the purpose of making out lists of proper persons to serve the

the

Surveyors' ap-
pointment.

the office, and more than two parts out of three of those assembled, agreed on *W. W.*, one of the list, as a proper person to serve for the ensuing year, whose name together with the said list was duly returned, and delivered to the justices at their following special sessions, holden in the week next after the last *Michaelmas* general quarter sessions: but that the justices by reason of some dispute respecting the account of the former surveyor, made no new appointment, and that no appointment had been made since, and the roads were getting into decay. In shewing cause, *R. v. Sparrow*, was admitted to decide the case; and *per* Lord *Ellenborough* C. J. This part of the act is only directory to the magistrates to make the appointment at the time mentioned, but there are no negative words to prevent them from exercising their office in that respect at any subsequent time, if it shall be necessary: and common sense requires that if the appointment be not made at the first special sessions, it should be made afterwards. *Per Cur.* Rule Absolute, 4 *E. R.* 142.

In the case of *R. v. Baldwin* and others, *H.* 37 *G.* 3. A rule was moved for, to shew cause why a *mandamus* should not issue to the defendants and the other justices of *Surrey*, commanding them to appoint one or more persons named in the list of 21 persons returned to them as directed by 13 *G.* 3. c. 78. (above) to be surveyors of the highways for the parish of *Battersea*. In fact, the defendants had appointed two of the persons named in the list, but they had also appointed a third surveyor not in the list.—*L. Kenyon* Ch. J. By the first section in the act of parliament, if the list of persons returned to the justices do not contain the names of persons whom the justices think qualified, they may appoint any other persons of the parish who are properly qualified. If indeed the magistrates act corruptly, they may be punished for an abuse of their discretionary power; but no corruption is even suggested in this case. The lists are directed by the act only for the purpose of assisting the magistrates, who in many instances might not perhaps know a sufficient number of persons fit for the office. Rule discharged. 7 *T. R.* 169.

Which appointment shall by the constable, &c. be notified to every person so appointed within three days after such appointment, by serving him with the said warrant, or by leaving the same or a true copy thereof at his house or usual place of abode. *Id.*

Every person so appointed, if he accept the office, shall be surveyor of the highways for the said parish, &c. for the year ensuing, and shall take upon him and duly execute the said office. *Id.*

Provided,

Provided, that no person who hath been appointed and hath served the office for one year shall be liable to be appointed again for the same parish, &c. within three years from the time of such first appointment and service, unless he shall consent thereto. *Id.*

Surveyors' appointment.

The said justices shall then and there give such of the said surveyors as shall personally appear before them a charge, for the better performance of their duty. *Id.*

If any of the persons so appointed, whose names were contained in the list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions and accept the said office, if appointed thereto in manner aforesaid; or shall not, within 6 days after being served with such warrant of appointment, signify his acceptance thereof, either in person or by writing, to one of the said justices, he shall forfeit 5l. And if any person so appointed, whose name was not contained in the list, shall refuse or neglect to accept the said office, or shall not, within six days after being served with the appointment, shew to one of the justices signing such appointment, sufficient cause why he should not serve such office, he shall forfeit 50s. *Id.*

Penalty on refusal to serve, and others appointed with salaries.

But if no such list shall be made and returned, or if the justices shall make an appointment, and the person appointed shall refuse to serve, the said justices, or any two of them, shall at the said special sessions, or at some subsequent special sessions, to be holden within one month after, nominate and appoint some other person whom they shall judge proper, and appoint him a salary out of the said forfeitures and all other forfeitures, fines, penalties, assessments, and compositions to be raised within such parish, &c. as they shall think fit, not exceeding one-eighth part of what shall have been raised by an assessment of 6d. in the pound for the use of the highways in such parish, &c. where any such assessment hath been raised; and observing the same restriction as near as they can, from the best information they shall be able to get of the probable amount of such assessment, where none hath been already made: And the said justices may, if they think fit, require the constables, &c. and surveyor of such parish, &c. or any of them, to return to the said justices at such time and place as they shall appoint an account in writing of the sum which such assessment of 6d. in the pound hath raised, or will in his opinion raise within such parish or place. *Id.*

Where no list is returned, the justices shall appoint.

If the constables, headboroughs, tithingmen, churchwardens, surveyors, and such householders as aforesaid, shall neglect or refuse to make such list, or if the constable shall not return such list when made and such duplicate thereof as aforesaid,

Surveyor refusing to act.

aforesaid, and give such notice or notices, and serve such warrants as in this act is directed, or if such constable, &c. and surveyor, or any of them, shall neglect to return such account of the amount of such assessment as aforesaid, when so required, he shall forfeit 40s. *Id.*

Provided, that in cities, boroughs, and towns corporate, the justices shall not allow any salary for any surveyor, other than such as shall be agreed on by two parts out of three of the persons assembled in the respective parish, township, or place within such city, borough, or town corporate. *Id.* f. 53, 54.

Assistant surveyor.

And in all cases where the justices, upon neglect or refusal of the person so appointed surveyor to accept the said office, shall appoint any other with a salary; they shall appoint one substantial inhabitant of such parish, township, or place, for *assistant* (E) to such surveyor, until the next annual appointment of surveyors: And if the person so appointed assistant shall, on notice of such appointment, refuse to accept the office, he shall forfeit 50s. And in that case they shall appoint any other substantial inhabitant for assistant to such surveyor as aforesaid; and if such second appointed assistant shall refuse to accept that office, he shall in like manner forfeit 50s. And in such case they may appoint a third person in like manner to be assistant to such surveyor, who shall be entitled to these last-mentioned forfeitures, and also such further allowance by way of salary as the said justices shall think proper, to be paid as the surveyor's salary is hereby directed to be paid. Provided that no person so appointed assistant for one year shall be liable to be appointed assistant again for the same parish, township, or place within three years next following such appointment, without his consent. f. 2.

Bond given by the surveyor.

The surveyor of any parish, township, or place, who shall not reside therein, but shall be appointed with such salary as aforesaid, shall (if required by the churchwarden, overseer, or any principal inhabitant, give bond, upon paper without stamp, (for which the justice's clerks shall have 6d. and no more,) to account for the money that shall come to his hands to some proper person to be nominated by the justices with sufficient surety, as surveyor, according to the directions of the act. f. 3. 48.

Assistant's duty.

The said assistant shall on request assist the surveyor in calling in and attending the performance of the statute duty; in collecting the compositions, fines, penalties, and forfeitures; in making and collecting the assessments; in making out and serving notices; and in such other matters as shall be reasonably required of him by the surveyor in the execution of his office; and shall account and pay to the surveyor

or his order from time to time, all the money that shall come to his hands, on pain of forfeiting double. And if he shall wilfully make default in the performance of any of the duty required of him, he shall forfeit not exceeding 5l. nor less than 40s. *f. 4.*

The justices shall at every special sessions to be holden in the week next after the *Michaelmas* quarter sessions cause to be delivered a printed abstract of the most material parts of this act to every surveyor to be then appointed by them, as the charge hereby directed to be given. *f. 70.*

Abstract of the act to be delivered to the surveyors.

And the surveyor shall pay to the justices' clerks for the appointment and charge the sum of one shilling. *f. 48. 70.*

Fee for the appointment and charge.

If two parts out of three of those so to be assembled for the nomination of surveyors shall agree in the choice of any particular person of skill and experience to serve the office of surveyor, and in settling a certain salary for his trouble therein, and shall return the name of such person (B) together with the list to the justices at their said sessions to be holden in the week next after the *Michaelmas* quarter sessions, the said justices may, if they think proper, appoint such person to be surveyor for such parish, township, or place, and allow him the salary mentioned in such agreement; which shall be raised and paid in the same manner as the salary herein-before mentioned is directed to be raised and paid. *f. 5.*

Appointment of special surveyors.

If a surveyor shall die, or become incapable to execute his office, before the next special sessions for appointing surveyors, two justices, at some special sessions, may appoint another whom they shall think proper, until the next special sessions for appointing surveyors as aforesaid. And if such deceased surveyor had a salary, they may allow the same salary to his successor, in proportion to the time he shall serve the said office. *f. 5.*

Surveyor dying.

IV. *Who are liable to repair, and in what proportion.*

1. *Of the parish.*
2. *Of individuals bound in respect of inclosures.*
3. *Of prescription.*
4. *Of repairs by private persons.*
5. *Of the proportion.*

1. It seems to be agreed that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are: But there is no doubt but that particular persons may be burdened with the general charge of repairing a

Parish in general to repair.

highway, in two cases; namely, in respect of an inclosure, or by prescription.

Commissioners under an inclosure act (authorising them to set out public and private roads, which public roads should be repaired as other public roads, and which private ways should be repaired by such persons and in such manner as the commissioners should direct) cannot direct that the private as well as public roads should be repaired as other public roads are by law to be repaired.

R. v. Cottingham. M. 35 G. 3. B. R. This was an indictment against the inhabitants of the parish of *Cottingham* for not repairing a road. By stat. 6 G. 3. c. 78. for enclosing certain common lands, the commissioners were empowered to set out both public and private roads, which public roads should be repaired in like manner as other public roads, and all *private ways* should be repaired *by such persons and in such manner* as the commissioners in their award should direct. The commissioners directed that all roads, whether public or private, should be repaired in like manner as other public highways are repaired by the laws of this realm. The defendants pleaded that no allotment was made to or for the use or benefit of the inhabitants of the parish under this act; and that at the time of making the award under it the inhabitants of the parish were not liable to repair the road in question, which was a private road, or any other private road over the lands enclosed. The prosecutor demurred to this plea: And, after argument, judgment was given for the defendants.—Lord *Kenyon* Ch. J. (*inter alia*) said; it is contended that the legislature meant that the parish, who derive no benefit from this act, should be made subject to the burden of repairing this road. The act empowers the commissioners to set out all the roads, adding that the public roads shall be repaired as other public roads are repaired, and that the private roads shall be repaired *by such person and persons* and in such manner as the commissioners shall direct. And the question is, whether the words “person and persons” extend to any strangers that the commissioners should name, the inhabitants of *Cornwall* or *Yorkshire* for instance, or whether they must be confined to *such persons as are interested in the inclosure*? Common sense requires that the latter construction should be adopted. 6 T. R. 20.

Highway lying in two parishes, two justices to determine what parts shall be repaired by each.

By 34 G. 3. c. 64. After reciting that it frequently happens that the boundaries of parishes pass through the middle of a common highway, and one side of such highway is situate in one parish, and the other side in another parish, whereby great inconveniences often arise in repairing the same, *it is enacted*, that two justices, on complaint (F) of any surveyor of any parish, (stating in writing and by a plan thereunto annexed, that there is such a highway, one side whereof ought to be repaired by one parish, and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof,) may issue their summons (G), with a copy of such writing and plan

plan, to the surveyor of such other parish to appear before them on a day mentioned in such summons, not more than 14 nor less than seven days from the day of the date of such summons; and if the parties appear, such justices may then proceed finally to decide the matter in manner hereinafter mentioned, in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter for any further time not more than 21 nor less than 14 days from the day of such adjournment, of which the surveyor not appearing shall have notice; on which day the said justices shall proceed to hear the parties and their witnesses, and whether the party summoned appear or not shall proceed to examine and finally determine the matter in form following, (viz.) They shall divide the whole of such highway by a transverse line crossing the same into two equal parts, or into two such unequal parts and proportions as, in consideration of the soil, waters, floods, the inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right; and to declare, adjudge, and order (H) that the whole of such highway on both sides thereof, in one of such parts, shall be maintained and repaired by one of such parishes, and that the whole thereof on both sides of the other part, shall be maintained and repaired by the other of such parishes; and shall cause such their order, and a plan of such highway, and the allotment thereof as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace; and shall also cause such posts, stones, or other boundaries to be set up in such highway as they shall think necessary for ascertaining such division and allotment as aforesaid. *f. 1.*

And under such order and plan shall be so filed with the clerk of the peace as aforesaid, such parishes shall be bound as of common right to maintain and keep in repair such parts of such common highway so allotted to them as aforesaid, and shall be liable to be prosecuted and indicted for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in any act of parliament for repairing highways, in like manner as they are liable to repair any other common highway within such parish respectively; and also shall be discharged from the repair of such other parts of the highway as shall not be included in their respective allotments. *f. 2.*

And all costs, charges, and expences incurred, shall be defrayed by such two parishes, to be ascertained by such

Each parish afterwards bound to repair the parts so allotted.

Costs of the proceedings.

two justices; and if not paid, either such justices, or any other justice, may levy the same by distress and sale, with the costs of such distress, on the goods and chattels of any surveyor of the highways of the parish refusing or neglecting to pay. *f. 3.*

Not to alter the boundaries of counties, &c.

Provided, that nothing herein shall affect, change, or alter in any manner whatsoever, any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes, otherwise than for the purpose of repairing such highways as aforesaid. *f. 4.*

Not to relate to highways repaired by bodies politic, tenure, &c. without consent.

Nothing herein shall relate to highways repairable by bodies politic or corporate, townships, or other such places or private persons, by reason of tenure of lands, or otherwise howsoever, but shall be construed to relate to such highways the repair of which belongs to parishes only; unless such bodies or persons be desirous that the same shall be placed under the regulations of this act; in which case such two justices may proceed therein in like manner as is herein directed with respect to parishes. *f. 5.*

Appeal.

Either of the two parishes by an order in vestry specially called for the purpose may appeal to the next quarter sessions of the county where such parishes shall lie after such order is filed as aforesaid, who may make such order as shall appear to them to be just, either by affirming, quashing, or amending the order of the two justices; and shall allow costs to either party as they shall think right; which order of sessions shall not be removed by *certiorari* or otherwise, but shall be final to all intents and purposes whatsoever. *f. 7.*

Certiorari.

2. Of individuals bound in respect of inclosures.

Repairing in respect of an inclosure.

A man may be bound to the repair of a highway, in respect of an inclosure of the land wherein it lies; as where the owner of lands not inclosed, next adjoining to the highway, incloseth his lands on both sides thereof; in which case, he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because before the inclosure the people used, when the way was bad, to go for their better passage over the fields adjoining out of the common track, which liberty is taken away by the inclosure. *1 How. c. 76. f. 6.*

[Note. See post, this title, sect. XI. as to inclosures by act of parliament.]

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way is made. 3 *Salk.* 182.

Also it hath been holden, if one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way; but if there be not such an ancient inclosure of the other side, he ought to repair but half that way. 1 *Harw. c. 76. f. 7.*

Therefore if there be an old hedge time out of mind on one side of the way, and a person having land on the other side make a new hedge, such person shall be charged with the whole repair. 1 *Sid.* 464.

But if one person make an hedge on one side of the way, and another person make an hedge on the other side of the way, they shall be chargeable to the repair thereof by moieties. 1 *Sid.* 464.

But it is said that wherever one is bound to repair a highway, or part thereof, in respect of an inclosure, and he lays it open again as it was before, he shall be freed from the charge of such repair. 1 *Harw. c. 76. f. 7.*

3. *Of prescription.*

A particular person may be bound to repair a highway in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation in judgment of law never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such a corporation hath always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do. But it is said that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like service. *Id.*

Repairing by prescription.

Yet it seems, that an indictment charging a tenant in fee simple, with haying used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors, or those whose estate he hath, have always so done; for that is implied. 1 *Harw. c. 76. f. 8.*

But the indictment must set forth where those lands lie. 2 *H. H.* 181.

And in the case of *Rider v. Smith* it was determined that in an action on the case for not repairing a private highway leading

leading through the defendant's close, it is sufficient to allege that the defendant, by *reason of his possession of the said close* called, &c. and of two closes of land with the appurtenances, contiguous and next adjoining thereto, is bound to repair the said way. 3 T. R. 766.

Townships or other divisions within a parish may be liable to repair.

Under the head of prescription may be considered the case where, not the whole parish, but particular townships or other divisions within the parish have for time immemorial repaired particular roads within that parish; which prescription, being ancient, and without interruption, is presumed to have had its origin by license on an inquisition of *ad quod damnum*, or other legal commencement. And it would be very prejudicial in large parishes, if every inhabitant were liable to repair throughout that whole parish, when the time occupied in going and returning might exceed the time appointed by the law for labour.

But a private agreement amongst the inhabitants, not being ancient, nor confirmed on an inquisition of *ad quod damnum*, that some of the inhabitants shall repair one part of the highway, and some of them another part, is not good: It may be binding amongst the parties thereunto, so as on a breach thereof one party may have an action upon the case against the other; but with respect to the public, they continue equally liable as before; for such private agreement cannot alter the law.

But on indictment the reason why they are so liable must be set forth.

In the case of *R. v. the inhabitants of Great Broughton in Cumberland*, H. 11 G. 3. an indictment was brought in the usual form, alledging that a certain part of the highway, &c. at the parish of *Bridekirk* in the county aforesaid, was ruinous, &c. and that the inhabitants of the division of *Great Broughton* in the parish of *Bridekirk* aforesaid, the common highway aforesaid, (so as aforesaid being in decay) from the time whereof the memory of man is not to the contrary, *ought to repair and amend*, when and so often as it shall be necessary. — On a verdict being found against the inhabitants, a writ of error was brought in the king's bench; and the assignment of error was, "that it is not shewn or alleged in the indictment that the inhabitants of this division *have used and been accustomed* and of right ought to repair and amend this highway, or in what right, or for what cause they ought to repair and amend it.—By the court: At the common law, and of common right, the inhabitants of a parish at large are bound to repair the highways; and here is no reason shewn why this particular division should be obliged to do it. It ought to appear upon the face of the indictment, by what right the charge was laid upon this particular division. If you lay a charge upon persons against common right, you must shew how they are bound; and it

is not enough to shew what they immemorially ought to repair, but it should be shewn that they *have repaired*. The court therefore held this indictment for that reason to be bad, and reversed the judgment. 5 Burr. 2700.

So in the case of *R. v. the hamlet of Penderryn, T. 28 G. 3.* A presentment had been made of a road by a justice upon his own view under 13 G. 3. c. 78. s. 24. which stated that certain parts of the highway lying in the parish of *Llangevelach* were out of repair, &c., and that the inhabitants of the parcel or hamlet of *Penderryn* in the said parish of *Llangevelach* the said common highway, so in decay, ought to repair and amend when and so often as it should be necessary. This presentment was removed by *certiorari*, and after verdict it was moved in arrest of judgment that it was not stated, that the inhabitants were bound to repair the road by any *custom or usage*. On shewing cause against the rule, It was said, that the form pointed out in the schedule to the act had been exactly followed; and that by the 69th sect. it was provided, that no advantage should be taken for want of form in any of the proceedings. In support of the rule was cited the case of *R. v. Linkfield-street, M. 26 G. 3. B. R.* where this point was determined; and also *Sty. 163.*; and *Andr. 216.*; and 5 Burr. 2700.—*Per curiam*: This presentment is clearly bad, for being an attempt to charge *part of a parish only* with the repairs of the road, which is against common right, it should be shewn expressly *how* they were liable. This is an objection to the *substance* and not merely to the *form*. Judgment arrested. 2 T. R. 53.

But if the inhabitants of a township, who were bound by prescription to repair the roads within the township, be expressly exempted by the provisions of the road act from the charge of repairing new roads to be made within the township, that charge must necessarily fall on the rest of the parish. 2 T. R. 106.

R. v. Inhabitants of Bridekirk in Cumberland. T. T. 49 G. 3. An indictment for the non-repair of a common highway within the parish, after stating the termini of the highway, charged that a *certain part* of the same highway between such and such places (describing them with the length and breadth), on the 1st of June 1807, &c. was out of repair, &c., and then it alleged that the inhabitants of the parish of *Bridekirk*, were immemorially bound to repair the said highway. The defendants pleaded that the parish of *Bridekirk*, from time immemorial, was divided into seven townships (naming them), and that the inhabitants of the said several townships respectively, from time immemorial, had repaired independently of each other when necessary,

And the quantity of road which they must repair, should be shewn.

such and so many of the several and respective ancient common king's highways, respectively situated within the said respective townships as would otherwise be repairable by the inhabitants of the said parish at large; that *part* of the said part of the said king's common highway in the indictment specified and thereby supposed to be ruinous now is and, during all the time in the indictment mentioned, *hath been situate in the said township of Great Broughton*, in the said parish, and during all that time was and still is a king's common highway, which but for the said prescription or usage would have been and would be repairable by the inhabitants of the said parish at large, *and that the residue of the said part of the said king's common highway in the said indictment specified, &c. is and during all the time, &c. hath been situate within the said township of Little Broughton* in the said parish, &c., and by reason of the premises the inhabitants of the said parish at large ought not to be charged with the repairing the said *parish, &c. of the highway in the indictment specified; but the respective parts thereof* situate in the said respective townships of *Great Broughton and Little Broughton*, ought to have been and still ought to be repaired by the respective inhabitants of these respective townships independent of the rest of the inhabitants of the said parish, &c. To this there was a special demurrer because the plea did not set forth or distinguish *what part* of the highway alleged to be ruinous lies within the townships of *Great Broughton*, and *what part* in the township of *Little Broughton*.

It was argued in support of the demurrer that the inhabitants of the parish at large, being liable at common law to the repair of all highways within it, could only discharge themselves by shewing with certainty on whom the burthen lay, and in what right; for which he cited, *R. v. Sheffield*, *R. v. Panderryn*, and *R. v. Great Broughton*. The plea therefore should have stated that such a part of the highway specifying it was situate within the township of *Great Broughton*, the inhabitants of which township were immemorially bound to repair it, and that such other part specifying it (or the residue of the highway stated in the indictment) was situate within the township of *Little Broughton*, and that the inhabitants of that township were immemorially bound to repair such other part.

The court were decidedly of opinion that this objection was well founded. That the parishioners must necessarily know the limits of the several townships within it, and were bound to shew with certainty the parties who were liable to repair every part of the highway indicted, and in what right they were so bound. 11 E. R. 304.

4. Of repairs by private persons.

The surveyor shall from time to time give information upon oath to the justices, or two of them, of all such highways and of all bridges, causeways, or pavements upon such highways as are out of repair, and ought to be repaired by any person or persons, bodies politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same; of which notice shall be given by the surveyor to the occupier or occupiers of the lands or tenements liable to such repairs, or to such other person or persons, bodies politic or corporate, as are chargeable with the same: And if such repairs shall not be effectually made within the time so limited, the said justices shall present such highways, bridges, causeways, or pavements so out of repair, together with the person or persons, bodies politic or corporate liable to repair the same, at the next general quarter sessions for the limit wherein such highway shall lie: And the justices there, if they see cause, may direct the prosecution to be carried on at the general expence of such limit, and to be paid out of the general rates within the same. 13 G. 3. c. 78. s. 23.

Repairs by private persons how to be enforced.

Where any lands have been or shall be given for the maintenance of causeways, pavements, highways, and bridges, the persons enfeoffed or trusted therewith shall let them to farm at the most improved yearly value, without fine. And the justices in their open sessions shall inquire, by such ways and means as they shall think fitting, into the value of such lands, and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the persons so intrusted have been negligent or faulty in the performance of their trust. Except such lands as have been given for the uses aforesaid to any college or hall in either of the universities of this kingdom, which have visitors of their own. s. 51.

5. Of the proportion.

By the 34 G. 3. c. 74. * The surveyor, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, shall at proper seasons in every year use their

Proportion of labour.

* By this statute, which was passed to explain and amend the regulations in the general highway act, 13 G. 3. c. 78. respecting statute-duty, it is enacted, that all the clauses, powers, and provisions

their endeavours for the repair of the highways, and shall be chargeable thereto as followeth: That is to say,

Person keeping a team, draught, or plough, and not occupying above 50l. a-year in the parish where he resides, shall send for six days one carriage and two men.

Every person keeping a waggon, cart, wain, plough, or tumbrel, and *three* or more horses or beasts of draught used to draw the same, shall be deemed to keep a *team draught* or *plough*, and be liable to perform statute duty with the same, in the parish, township, or place where he resides, and shall six days in every year, (if so many days shall be found necessary,) to be computed from *Michaelmas* to *Michaelmas*, send on every day, and at every place, to be appointed by the surveyor for amending the highways in such parish, township or place, *one* wain, cart, or carriage, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessaries fit to carry things for that purpose, and also *two able men* with the same; which duty so performed shall excuse every such person from his duty in such parish, township, or place, in respect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of 50l. which he shall occupy therein. *§. 4.*

If occupying 50l. a-year, above 50l. a year in the same parish,

Every person keeping such team, draught, or plough, and occupying in the *same* parish, township, or place, lands, tenements, woods, tithes, or hereditaments of the yearly value of 50l. *over and beyond* the said yearly value of 50l. in respect whereof such team duty shall be performed; — and every such person occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50l. in any *other* parish, township, or place, besides that wherein he resides; — and every other person, *not* keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments of the yearly value of 50l. in any parish, township, or place; — shall in like manner respectively and for the same number of days find and send one wain, cart, or carriage, furnished with not less than *three horses*, or four oxen and one horse, or two oxen and two horses, and *two able men*, to each wain, cart, or carriage; and in like manner for *every* 50l. a-year respectively which every such person shall further occupy in any such parish, township, or place respectively; such wains, carts, or carriages to be employed by the surveyor in repairing and amending the highways within the parish, township, or place where such lands, &c. shall respectively lie. *Id.*

or 50l. a-year in another parish.

Persons not keeping a team, draught, or

Every person who shall *not* keep a team draught, or plough, but shall occupy lands, tenements, woods, tithes, or

sions contained in the 13 G. 3. c. 78. (except such as were thereby repealed or altered) should continue in force in the same manner as if they were re-enacted in that act. *§. 7.*

hereditaments *under* the yearly value of 50*l.* in the parish, township, or place where he resides, or in any other parish, township, or place; — and every person *keeping* a team, draught, or plough, and occupying lands, &c. under the yearly value of 50*l.* in any *other* parish, township, or place than that wherein he resides; — shall respectively contribute to the repair of the highways, and pay to the surveyor, in lieu of such duty, the sums following; *viz.* For every 20*s.* of the annual value of such lands, &c. one penny for every day's statute duty, which shall be called for by the surveyor, and in like manner shall pay one penny for every 20*s.* of the annual value of such lands, &c. which he shall occupy in any such parish, township, or place respectively, above the annual value of 50*l.* and less than 100*l.*; and so for every 20*s.* that each progressive and intermediate annual value of 20*s.* which he shall so occupy shall fall short of the further increase of 50*l.* in every parish, township, or place where such lands, &c. shall respectively lie, for every day's statute duty so to be required as aforesaid. *Id.*

plough; or keeping one, and occupying lands in another township, shall pay a sum in lieu.

Provided, that no person keeping such team, draught, or plough, and performing duty with the same as aforesaid in the parish, township, or place where he resides, and not occupying lands, tenements, woods, tithes, or hereditaments within the same, of the yearly value of 30*l.*, shall be obliged to send more than *one* labourer with such team, draught, or plough. *Id.*

Keeping a team, and not occupying 30*l.* a-year.

All which said several sums shall be considered as compositions, and shall be paid to the surveyor at the time the compositions are to be paid under the authority of the aforesaid act, or within ten days after; or in default of such payments the surveyor shall apply to a justice acting for such district, who shall summon such defaulter to appear at some special or petty sessions to be holden for such district, at which two justices at the least shall be present, to shew cause why he refused or neglected to pay, and in default of appearance, or if on appearance he shall not make it appear to the satisfaction of such justices that he is poor and indigent, and as such an object deserving relief; such money shall be levied by distress, in like manner as the forfeitures for neglect of statute duty. Provided, that when on application as aforesaid the justices shall discharge any poor and indigent person from payment of such rate or composition money, such person shall at the same time be discharged from any expences in consequence thereof. *Id.*

Sums to be deemed compositions and to be recovered by the surveyor.

One person may be discharged from payment.

And whereas it may frequently happen that persons wholly gaining their livelihood by the wages of daily labour, and occupying rateable tenements, by reason of age, sickness, a numerous family or misfortune, may be in poor and indigent

Justices may discharge poor persons from such rates.

indigent circumstances, and it may be expedient in certain cases to discharge such persons from all rates, assessments, or composition whatsoever, it is enacted, that on the application of any such person to two justices at any such special or petty sessions, such justices (having first given notice to the surveyor to appear on the part of the parish, township, or place) shall examine into the situation and circumstances of the person making such application, and if it shall appear to the satisfaction of such justices that he is really poor and indigent and deserving such relief, they may exempt him from all such rates, assessments, or composition.

§. 5.

Keeping one or two horse carts only.

Every person who shall not keep a team, draught, or plough, but shall keep one or more *cart* or *carts*, and one or two horses or beasts of draught only, used to draw in each of such carts upon the highways, shall be obliged to perform his statute duty for the like number of days with such cart or carts, and horse or horses, or beasts of draught, and *one labourer* to attend each cart; or to pay for the lands, tenements, woods, tithes, and hereditaments, which he shall occupy, according to the rate herein-after mentioned at the option of the surveyor. §. 2.

Keeping a coach, &c.

Every person who shall keep a coach, post-chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy lands, &c. of 50l. a-year in the parish, township, or place where he resides, shall pay to the surveyor 1s. in respect of every such day's statute duty for every horse which he shall draw in any such carriage, or shall pay according to the value of the lands, &c. which he shall occupy, at the option of the surveyor. *Id.*

Team duty may be exchanged for labourers.

And if the teams, draughts, or ploughs, or any of them, shall not be thought needful by the surveyor on any of the said days, then every such person who should have sent any such team, draught, or plough, according to the directions aforesaid, shall, according to the notice given to him by the surveyor, send unto the said work for every one so spared, three able men; or pay 4s. 6d. in lieu thereof, at the option of the surveyor. *Id.*

Where teams are not necessary.

Where the employment for teams is of such sort, that two horses will be sufficient for one cart, or where a stand cart with one horse shall be necessary, the surveyor may call upon any person liable to send a team, draught, or plough, according to this act, who keeps one or more cart or carts, and three or more horses, to send such cart or carts, horse or horses, to perform his statute duty, as the surveyor shall find most convenient; and he shall allow every such stand cart, and one horse as half a team, and every cart and two horses as two-thirds of a team. And if a waggon shall

be found necessary for any particular business, the surveyor may require the duty, or any part thereof, to be performed with such waggon by any person who keeps one. Which directions of the surveyor shall be observed, or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. 13 G. 3. c. 78. s. 36.

But by 26 G. 3. c. 107. No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his inrollment until his discharge, shall be obliged to perform any highway duty, commonly called statute work. s. 130.

Militia men exempted.

V. *Composition instead of labour.*

Any person liable to perform statute duty by sending a team, draught, or plough with men, horses, or oxen, in manner aforesaid, may compound for the same, if he think fit, by paying to the surveyor such sum as the justices at their *Michaelmas* special sessions in every year shall adjudge to be reasonable, not exceeding 12s. nor less than 3s. for each team, draught, or plough for each day; and in default of their adjudging the same, then in lieu of every day's duty for each team, draught, or plough, 6s.; — for every cart with two horses or beasts of draught, not exceeding 8s. nor less than 3s.; — and in default of their adjudging the same the sum of 4s.; — and for each cart with one horse or beast of draught, not exceeding 6s. nor less than 2s. and in default of their adjudging the same, the sum of 3s.; — in lieu of each day's duty. 44 G. 3. c. 52. s. 2.

Composition for a team, draught, or plough.

Provided always, that if it shall appear to the justices at their *Michaelmas* special sessions, or any other special or petty sessions, at which two justices shall be present, that in any place there will be a difficulty in procuring the necessary carriage, or a sufficient number of labourers, without paying high and extravagant prices for the same, the said justices may order the team duty, or so much thereof as they shall think fit, to be performed in kind, except in respect of such teams as belong to persons who do not occupy 30l. a-year. 34 G. 3. c. 74. s. 6.

Justices may direct team duty to be performed in kind.

And also, such justices may order all such persons as gain their living by daily labour, or such part of them as they may think fit, to perform six days' labour upon such highways in kind, either by themselves or other sufficient labourers, in case so many days' duty shall be required, upon being paid for such labour the usual wages given to labourers in such place. s. 6.

Labourers to do statute duty on payment of the usual wages.

Provided,

Where part of
such teams, or
labourers, only
are required.

Provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices in some given proportion, as one half, third, or fourth part thereof, and the surveyor shall in that case, at a public vestry, put the names of all the persons liable to send such teams into one hat or box, and the names of all the persons liable to perform such labour into another hat or box, and some inhabitant then present shall draw out such number from each, as shall be equal to the proportion so ordered by the justices; and the persons so drawn shall perform such duty in kind for that year. And if any such order shall be made or continued in the subsequent year, the same method shall be observed, but the names drawn in the preceding year shall not be put into such hat or box. And in every succeeding year, such method or regulation shall be observed by the surveyor, as to render the duty so required to be performed in kind as equal amongst the several persons liable thereto as may be. Which order of the said justices, so far as the same shall be extended, shall supersede the said power or liberty of compounding, and shall be binding and effectual to all intents and purposes, and shall continue in force until it shall be discharged or varied by the justices at some subsequent special sessions for the highways, to be held in the week next after *Michaelmas* quarter sessions. *Id.*

If any person who shall keep a team, draught, or plough, shall not occupy lands, tenements, woods, tithes, or hereditaments of 30l. a-year, in the parish, township, or place where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon or from lands which he shall occupy in one or more adjacent parish or parishes, it shall be lawful for the justices at some special sessions to mitigate and reduce the duty or composition in such manner as they shall think reasonable. 13 G. 3. c. 78. s. 40.

Provided, that the surveyor shall on some *Sunday* in *November* yearly cause ten days' notice (1) at least to be given in the church or chapel, and if there be no church or chapel or no service be performed therein, then at the most public place there, and repeat the like notice on the next succeeding *Sunday*, of the time and place when and where persons permitted and inclined to compound may signify to the surveyor their intention so to do; and every person signifying the same, who shall then or within one calendar month after pay to the surveyor the aforesaid composition, shall be discharged from the performance of such duty. And no composition shall be permitted, unless the same be paid at the day or within the time aforesaid. s. 41.

But where the occupation shall be changed, or a new occupant or inhabitant shall come to reside after the time appointed for the composition, such occupant or person coming to reside may be allowed to compound as aforesaid, provided they pay the composition money within 14 days after they shall enter upon the premises. And every tenant or occupier, who intends to quit the possession within six calendar months from the time fixed for the composition may compound for half the duty, and the succeeding tenant or occupier may compound or perform the duty in kind for the other half. *Id.*

Persons changing their occupations.

Provided, that where a person shall keep a draught or plough, and no carriage, he shall pay to the surveyor 1s. for every horse or pair of oxen or neat cattle used in such draught or plough for each day's duty, or pay according to rate aforesaid for the yearly value of the estate which he occupies as aforesaid, at the option of the surveyor. *f. 42.*

Keeping a draught or plough and no carriage.

And whereas by several acts of parliament concerning turnpike roads, a certain part of the duty called statute duty is directed to be performed on such roads, and it may happen in such places that the several persons liable thereto may have compounded for the same, in such case the surveyor of the parish, township, or place, where such composition shall have been made, shall pay to the turnpike treasurer or surveyor a proportionable part of the composition money so received, according to the number of days' duty which such persons were liable to perform on such turnpike road; which money shall be laid out on such part of the said turnpike road as lies within the parish, township, or place from which it was received, and not elsewhere. And if such surveyor of the highways shall refuse or neglect to pay to the turnpike treasurer or surveyor such part of the said composition money so received by him, within 20 days after he shall have received the same, on demand thereof made by such treasurer or surveyor, it shall be levied on his goods and chattels in like manner as penalties and forfeitures are to be levied by this act. *f. 44.*

Where there are turnpike roads, a proportion of the composition to be paid to the turnpike surveyor.

VI. *Working.*

The justices at special sessions held under this act, may, by writing under their hands and seals, order those highways (not being turnpike) which in their opinion do most want repair to be first mended, and at what time and in what manner; according to which order (if such there be) the surveyors shall proceed within their respective liberties, 13 G. 3. c. 78. *f. 25.* If the justices make no such order, then the surveyors shall have the like power of direction.

The justices may order what roads shall be repaired first.

Provided,

Exception of
three months in
the year.

Provided that, in order to prevent as much as possible any inconvenience to persons liable to perform statute duty, it shall be lawful for the inhabitants of every parish, township, or place, at a vestry or other public meeting under this act, to appoint three months in every year, within which no statute duty shall be performed; *viz.* one month in the spring to be called the *seed month*; one month in the summer for the *hay harvest*; and one month in the summer for the *corn harvest*; Provided, that notice in writing be given of the times so appointed to the surveyor of such parish, &c., and also the surveyor of every turnpike road lying within the same, within three days after such meeting, and 14 days at least before the beginning of each of such months. 13 G. 3. c. 78. s. 43.

Notice of the
time and place
of working.

The surveyor shall give or cause to be left at the house or usual place of abode of every person liable to perform statute duty four days' notice (K) at the least, of the day, hour, and place, upon which each of the said day's duty shall be required to be performed. s. 37.

Manner of
working.

And all such persons as aforesaid shall respectively bring with them such shovels, spades, picks, mattocks, and other tools and instruments as are useful and proper for the purposes aforesaid. 34 G. 3. c. 74. s. 2.

And all the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by the surveyor, for eight hours in every of the said days within such parish, township, or place, or in getting and carrying materials in and from any other parish, &c. to be employed in the repair of the highways of the parish, &c. for which they shall be required to perform such duty and labour as aforesaid. *Id.*

Penalty of not
working accord-
ing to the di-
rection of the
surveyor.

If any person sending a team as aforesaid shall not send a sufficient labourer besides the driver (except as before mentioned), or if any such labourer or driver, or the driver of any cart, shall refuse to work and labour according to the direction of the surveyor, or if any driver shall refuse to carry proper and sufficient loads, the surveyor may discharge every such team, cart, or labourer, and recover from the owner of every such team or cart the forfeiture which every such person would have incurred, in case no such team, cart, or labourer respectively had been sent. 34 G. 3. c. 74. s. 2.

Penalty of not
attending.

Every person making default in finding and sending such wain, cart, or carriage, furnished as aforesaid, and with such able men as aforesaid, shall forfeit 10s.; for every default in sending every cart with one horse and one man, 3s.; and for not sending every cart with two horses and one man, 5s.; and every person making default in sending any such

such labourer, or in performing such labour at the time and place, and in the manner directed by this act, or in paying composition for the same, shall for every such neglect forfeit 1s. 6d.; all which forfeitures shall be applied for the use of the highways within the parish, township, or place where the same shall arise. And the surveyor shall, with all convenient speed, proceed for the recovery thereof, that the same may be recovered before he makes up his accounts.

13 G. 3. c. 78. s. 37.

If in any place it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal proportion. *Id.*

Case where the whole duty is not needed.

VII. *Materials, how to be procured.*

The surveyor may take and carry away so much of the rubbish or refuse stones of any quarry within his district (except such as shall have been got by the surveyor of any turnpike road) without the license of the owner of such quarry as he shall judge necessary for the amendment of the said highways; but shall not dig or get stone in such quarry without leave of the owner. 13 G. 3. c. 78. s. 27.

Getting materials.

It shall also be lawful for such surveyor, for the use aforesaid, in any waste land or common ground, river, or brook, within his district, or within any other parish, township, or place wherein gravel, sand, chalk, stone, or other materials are likely to be found (in case sufficient cannot be conveniently had within the parish, township, or place where they are to be employed, and in case sufficient shall be left for the use of the roads in such other parish, township, or place) to search for, dig, get, and carry away the same; so as he do not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of 100 feet above or below any bridge, nor within the like distance of any dam or wear: — And likewise to gather stones lying upon any lands or grounds within the parish, township, or place where such highway shall be, for such service and purpose: — And to take and carry away so much of the said materials, as by him shall be thought necessary for the amendment of the said highways, without making any satisfaction for the said materials: but satisfaction shall be made for all damages done to the lands or grounds of any person by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds. s. 27.

But no such stones shall be gathered without the consent of the occupier of the lands, or a license from a justice, after having summoned the occupier and heard his reasons (if he shall appear and give any) for refusing his consent. *Id.*

Provided also that nothing herein contained relative to the gathering or getting of stones shall extend to any quantity of land (being private property) covered with stones thrown up by the sea, commonly called beach. *f.* 28.

It shall be lawful for the surveyor, for the use aforesaid, to search for, dig, and get sand, gravel, chalk, stone, or other materials, if sufficient cannot conveniently be had within such waste lands, common grounds, rivers, or brooks in and through any of the several or inclosed lands or grounds of any person whomsoever, within the parish, township, or place where the same shall be wanted, or by license from two justices at a special sessions, within any other parish, &c. adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish, &c. where such highways lie, or in the waste lands or common grounds, rivers, or brooks of such adjacent parish, &c. and that a sufficient quantity of materials will be left for the use of the parish, &c. where the same shall be (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation;) and to take and carry away so much of the same materials as the surveyor shall think fit, the surveyor making such satisfaction for the damage to be done to such lands by the getting and carrying away the same, as shall be agreed upon between him and the owner, occupier, or other person interested, in the presence and with the approbation of two or more substantial inhabitants; and if they cannot agree, then to be settled by the order of one justice of the limit where the lands lie *f.* 29.

Beysfield v. Porter and another, H. 51 G. 3. The general highway act 13 G. 3. c. 78. *f.* 27. enables the surveyor to take away so much of the refuse stones of any quarry within the parish, &c. without the license of the owners as he shall judge necessary for the amendment of the highways, and also to dig for and carry away materials from any waste land &c. for the same purpose, without making any satisfaction for those materials, "but satisfaction shall be made for the damages done to the lands of any person by carrying away the same in the manner hereinafter directed, for getting and carrying materials in inclosed lands, &c." By *f.* 29., If sufficient materials cannot be had within such waste lands, &c. it shall be lawful for every such surveyor to dig, &c. for other

them in the inclosed lands of any person within the parish, &c. (not being a garden, &c.) "and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, the said surveyor making such satisfaction for the damage to be done to such lands, by the getting and carrying away the same, as shall be agreed upon between him and the owners, &c. and in case they cannot agree then such satisfaction and recompence shall be settled and ascertained by order of one or more justice or justices of the peace, of the limit where such land shall lie." And s. 79 provides, "that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made on behalf of the parties who shall have committed such irregularity, &c. before such action brought; and in case no such tender shall have been made, it shall be lawful for the defendant by leave of the court before issue joined to pay into court such sum of money as he shall see fit, whereupon such proceedings or orders and judgments, shall be had, made, and given as in other actions when the defendant is allowed to pay money into court." The 80th section gives an appeal in cases not otherwise provided for but no question was made upon that clause.

The defendants in this case were the surveyors of the highways in the parish of *Buckminster* in *Leicestershire*, and the plaintiff brought this action against them for breaking and entering his close and passing over it with carriages, and digging the soil and prostrating the fences, and making a carriage road and laying gravel, &c. on it, and erecting and continuing a gate and posts there. The defendants pleaded the general issue and paid 24s. into court by way of amends under the 79th section of the act. At the trial the plaintiff's counsel opened the case by stating that the trespass was committed under the pretence of legal authority by the defendants, as surveyors of the highways for the parish. That there was a stone pit in the *Vicar's Close* (next but one to *Coy's Close*), but in the opposite direction from that part of the road to which the materials for repair were to be carried; out of which there was an old carriage way leading, though somewhat circuitously, to that part of the highway which was under repair; but that the defendants had forsaken the old way and had broken up the plaintiff's close, and had made a new way over it into the highway, and had for that purpose cut down his fence and put up a gate. On the other hand the defendants' counsel contended, that the 27th and 29th sections of the general highway act enables the surveyors to get and carry away materials for the amend-

ment of the roads, making satisfaction to the owners of lands for damages done by carrying away the same, to be ascertained in the manner thereby directed, and that therefore the defendants had a right to get the refuse stone and carry it over the plaintiff's land to the road under repair, subject to a satisfaction to be *subsequently* ascertained in the method prescribed by the 29th section. The plaintiff's counsel in reply contended, that the defendants in order to excuse themselves from the trespass ought to have tendered adequate compensation *before* they did any act. The learned judge nonsuited the plaintiff without entering into evidence on either side. A rule nisi was obtained in the last term for setting aside the nonsuit upon the construction of the act, and also upon another point (not necessary to be inserted here.) In the course of the argument *Le Blanc* and *Bayley* justices, put the question to the plaintiff's counsel to consider, whether the act does not require that the sufficiency of the amends, if disputed, shall be settled by the magistrates. They referred to the words, "the said surveyor making *such* satisfaction for the damage to be done, &c. *as shall be agreed upon between him and the owner, &c., and in case they cannot agree then such satisfaction and recompence shall be settled and ascertained by order of one or more justices,*" &c. If then the plaintiff, they observed, were not likely to agree or did not chuse to trust to the amends which might be offered to him by the surveyor, was it not his business to summon the surveyor before a magistrate, in order to have the amount ascertained? And is not that the only tribunal appointed by the act, in case of difference, for ascertaining the *quantum* of the amends?

Lord *Ellenborough* C. J. The only trespass on which we have now to decide, is for taking the refuse stone from a quarry and carrying it over the plaintiff's land, not for digging stones there, and the convenience of the case as well as the fair meaning of the words requires that the satisfaction should be made subsequent and not antecedent to the damage committed, for the mere difference of the weather, whether wet or dry, during the continuance of the operation may make great difference in the amount of the injury done to the land and in the consequent compensation. The convenience of the case is indeed all one way, and the party injured will make his application when he thinks that his whole compensation is capable of being ascertained. Then as to the sufficiency of the amends offered in this case, it was not the meaning of the legislature that it should be settled at nisi prius, for the act says in terms, that if the parties cannot agree "then such satisfaction and recompence shall be settled and ascertained by order of one or more justice or
" justices

“justices of the peace of the limit where such land or ground shall lie.” The parties therefore have no choice of any other tribunal to settle the amends in any case within the act. But if the trespass be committed maliciously and not for the purposes of the act, it is not a case within it and the plaintiff would be entitled to recover damages by the verdict of a jury.

Grose J. declared himself of the same opinion.

Le Blanc J. If the surveyors cannot agree with the owners or other persons interested in the land as to the amount of the satisfaction to be made for obtaining the materials, or carrying them over the land, they must resort to one or more justices by whom such amount is to be settled; and this is the only tribunal by which the quantum of amends is to be ascertained. Then as to whether the amends are to be tendered before or after the trespass, this case falls within the 27th sect. which speaks of satisfaction to be made for all damages *done*, (not *to be done*) to the lands of any person by carrying away the materials: in this instance the refuse stones from a quarry; and this satisfaction is to be made “in the manner therein-” after directed for getting and carrying away materials in “inclosed lands.” The subsequent clause then, which points out the manner, uses the words, “damages *to be done*” with reference as well to the former clause as to the antecedent part of the same clause: the difference therefore, if any, between the two clauses is rather in favour of the defendants’ construction.

Bayley J. Where there is a subsisting road by which the materials may be carried, the surveyors are not wantonly to deviate from that, and to make a new road for the purpose; but where there was not a convenient road before the act, authorizing the getting and taking of the materials in inclosed lands where they cannot conveniently be gotten in the open lands of the parish, and the getting them from another parish where they cannot conveniently be had in the same parish where the highway to be repaired lies, authorizes the making of a new road in order to get them conveniently. It was competent however to the plaintiff to have shewn by evidence that the new road was wantonly made, where the purposes of the act would have been fairly and effectually answered by carrying the materials by the old road; but no evidence was offered to the judge at the trial, that the new road across the plaintiff’s land was wantonly and maliciously made. Then as to the proper period for offering the amends, it certainly cannot be so conveniently ascertained what is the proper quantum of amends to be made till it is known what is the quantum of the damage sustained; and under the 29th section where power is given to dig in in-

closed lands for the materials as well as to take and carry away such as are already prepared, there must be less means of judging accurately of the quantum before the damage is done, though the words there used are "damage to be done;" than under the 27th section, where the right to dig for materials is confined to waste land, and where the refuse stone only is to be taken from any quarry; but at any rate this appears to be a case of damage done under the 27th clause. Rule discharged. 13 E. R. 200.

And in such places where, from the want of other materials, burnt clay may be substituted in the places thereof, it shall be lawful for the surveyor to dig clay in such places as he is authorized to dig chalk or gravel, and to dry the same upon the lands adjoining, and to burn the same upon any waste lands or common grounds, and to carry such clay in such manner as other materials are allowed to be carried by this act, upon making such satisfaction for the damages within the several inclosed lands where such clay shall be placed or carried, as herein directed with regard to other materials. s. 29.

Provided, that when the owner of such inclosed lands shall have occasion for any such materials for the repair of any highway or other roads or ways upon his estate, or which he shall be under obligation to repair, and shall give notice to the surveyor that he apprehends there will not be sufficient for those purposes; and also for the use of the public highways, in such case the surveyor shall not be permitted to dig, or take such materials without the consent of such owner, or an order of two justices, after having summoned and heard the said owner or occupier, or his steward or agent; which justices shall permit or restrain such power in such manner and under such directions as to them shall seem just. *Id.*

Provided, that no stone, gravel, or materials to be dug for the use of any other parish, township, or place than that wherein the same are found shall be removed or carried from the place where they shall be so dug at any other time than between the first of April and the first of Nov. or in the time of hard frost in the winter season. s. 32.

If any person shall dig or cause to be dug materials contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin works may be damaged or endangered, he shall forfeit not exceeding 5l. nor less than 20s. at the discretion of the court or justices before whom complaint shall be made. s. 33.

And where a sufficient quantity of stone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams within any parish, township, or place, the

the surveyor shall contract for the getting and carrying thereof (in presence of the assistant, if any such be appointed) at a meeting to be held for that purpose; of which ten days notice in writing shall be given, by fixing the same upon the door of the church or chapel, or if there be no church or chapel, at the most public place there; which notice shall specify the work to be done, and the time and place for letting thereof. And if the surveyor shall have any share or interest in such contract, or in any other contract for work or materials, or shall upon his own account let to hire any team, or sell or dispose of any timber, stone, or other materials (unless a license in writing for the sale of such materials, or for letting to hire such team, be first obtained from a justice;) he shall forfeit 10l. and be for ever after incapable to be employed as a surveyor with a salary.

f. 49.
 If any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials, make any pit or hole in such lands, rivers, or brooks as aforesaid, wherein such materials shall be found; he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired, during such time as the said pit or hole shall continue open; and after having dug up sufficient materials in such pit or hole, he shall within 14 days cause the same to be filled up, sloped down, or fenced off, and so continued. And where no materials shall be found, he shall within three days cause such hole or pit to be filled up, levelled, and covered with the turf or clod which was dug out of the same. *f. 31.*

Filling up holes.

Every surveyor shall, within 20 days after he shall be appointed to that office, cause all the said pits and holes which shall then be open, and not likely to be further useful, to be filled up or sloped down in manner aforesaid; and if they are likely to be further useful, he shall secure them by posts and rails or other fences, to prevent accidents to persons or cattle. *Id.*

If such surveyor or other persons shall neglect to fill up, slope down, or fence off such pit or hole, in manner and within the time aforesaid, he shall forfeit 10s. And if he shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for six days after he shall have received notice for either of those purposes from a justice, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands, he shall on proof of such neglect and notice before one justice, forfeit not exceeding 10l. nor less than 40s. the same to be applied in

the fencing off, filling up, or sloping down such pit or hole, and towards repair of the roads in the parish or place where the offence shall be committed, as such justice shall direct.
f. 31.

VIII. Removing obstructions and annoyances.

Annoyances in
general.

There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nuisances at common law. *1 Haw. c. 76. f. 48.*

By the common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use. *Ib. f. 61.*

Also it seemeth that an heir may be indicted for continuing an encroachment, or other nuisance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of the law to a new nuisance. *Ib.*

To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nuisance also at common law. *Ib. f. 50.*

And it seemeth clear that it is a nuisance at common law to suffer the boughs of trees growing near the highway to hang over the road in such a manner as thereby to incommode the passage. *Ib.*

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear that any person may justify the lopping such trees, so far as to avoid the nuisance. *Ib. f. 52.*

A gate erected in a highway is a common nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. *See the cases before cited in Sect. I. of this title.*

Trees and
hedges.

No tree, bush, or shrub shall be permitted to stand or grow in any highway within the distance of 15 feet from the centre thereof (except for ornament or shelter to the house, building, or court yard, of the owner thereof,) or hereafter be planted within the distance aforesaid: But the same shall be cut down, grubbed up, and carried away, by
the

the owner or occupier of the land or soil, within ten days after notice to him or his agent by the surveyor; on pain of 10s. for every neglect. 13 G. 3. c. 78. s. 6.

The possessors of the land next adjoining shall cut, prune, or plash their hedges; and also cut down or prune and lop the trees growing in or near such hedges or other fences (except those trees planted for ornament or shelter as aforesaid); in such manner that the highway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such highway to the damage thereof. And if such possessor shall not within ten days after notice (L) given by the surveyor cut, prune, and plash such hedges, and cut down, or prune and lop such trees, the surveyor may complain to a justice, who shall summon the possessor of the said lands to appear before the justices at some special sessions to answer to the said complaint; and if it shall appear to the justices at such special sessions that such possessor hath not complied with the requisites of this act, the said justices upon hearing the surveyor and possessor of such land or his agent (or, in default of appearance, on having due proof of the service of such summons) may order such hedges to be cut, plashed, and pruned, and such trees to be cut down or pruned, in such manner as may best answer the purposes aforesaid. And if the possessor of such land shall not obey such order within ten days after it shall have been made, and he shall have had notice thereof, he shall forfeit 2s. for every 24 feet in length of such hedge which shall be neglected to be cut and plashed; and 2s. for every tree which shall be neglected to be cut down or pruned and lopped; and the surveyor shall cause the same to be done, and the possessor shall pay, over and above the penalties, the charges and expences (M) of doing the same; to be levied by distress by warrant of one justice. s. 7.

Provided, that no person shall be compelled, or any surveyor permitted, to cut or prune any hedge at any other time than between the last day of *Sept.* and the last day of *March*; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be enlarged as hereinafter mentioned, or to cut down or grub up any oak trees growing in such highway or in such hedges, except in the months of *April*, *May*, or *June*, or any ash, elm, or other trees, in any other months than *Dec.* *Jan.* *Feb.* or *March.* s. 13.

Ditches, drains, or watercourses, of a sufficient depth and breadth for keeping the highways dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges shall

Ditches, drains,
and water-
courses.

shall be made and laid, where any cart-ways, horse ways, or footways lead out of the said highways into the lands adjoining thereto, by the occupier of such lands; and every person who shall occupy any lands adjoining to or near the highway, through which the water hath used to pass from the said highway, shall open, cleanse, and scour the ditches, watercourses, or drains for such water to pass without obstruction: And every person making default in any of the matters aforesaid, after ten days' notice given by the surveyor, shall forfeit 10s. *§. 8.*

Where the ditches, gutters, or watercourses, which have been usually made, or which are herein directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways; in such case it shall be lawful for the surveyor, by order of one justice, (N) to make new ditches and drains in and through the lands adjoining or lying near to such highways, or in and through any other lands, if it shall be necessary, for the more easy and effectual carrying off such water from the said highways, and also to keep such ditches, gutters, or watercourses scoured, cleansed, and opened; and the surveyors and their workmen may go upon the said lands for that purpose: Provided, that the said surveyors make proper trunks, tunnels, plats, bridges, or arches, over such ditches, gutters, or watercourses, where the same shall be necessary, for the convenient use and enjoyment of the lands through which the same shall be made, and from time to time keep the same in repair; and do also make satisfaction to the owner or occupier of such lands, which are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in several or inclosed grounds are hereafter directed to be settled and paid. *§. 14.*

Straw, dung, or other matter laid in the highway.

If any person shall lay in any highway any stone, timber, straw, dung, or other matter; or in making, scouring, or cleansing the ditches or watercourses shall permit the soil or earth dug out thereof to remain in the highway, so as to obstruct or prejudice the same, for five days after notice (L) by the surveyor; he shall forfeit 10s. *§. 9.*

And if any stone or timber, or any hay, straw, stubble, or other matter, for the making of manure, or on any other pretence not tolerated by this act, shall be laid in any highway within 15 feet from the centre thereof, and shall not within five days after notice given by the surveyor or some person aggrieved thereby be removed, the owner or possessor of the lands adjacent, or any other person by order of a justice, may clear the said highway, by removing the stone, timber, hay, straw, dung, or other matter, and have the same to his own use. *§. 10.*

If any person shall incroach by making or causing to be made any hedge, ditch, or other fence on any highway not being turnpike road, within the distance of 15 feet from the middle or centre thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands shall turn his plough in or upon any land or ground, within the distance of 15 feet from the middle or centre of any highway, where the breadth of such highway is formed and marked or described with certainty, and doth not exceed in breadth 30 feet, he shall forfeit 40s. for every such offence to him who shall make information thereof: And the surveyor may cause such hedge, ditch, or fence to be taken down or filled up, at the expence of the person to whom the same shall belong: And one justice, on proof to him made upon oath, may levy as well the expences of taking down such hedges, as the said penalty by distrets. *f. 63.*

Incroaching on the highway.

The surveyors shall, at all such times as they shall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, causeways, and pavements; and if they shall observe any nuisances, incroachments, obstructions, or annoyances, contrary to this act, they shall give to any person doing or permitting the same; personal notice, or notice in writing (L), to be left at his usual place of abode, specifying the particulars; and if such nuisances, obstructions, or annoyances shall not be removed, and the ditches, drains, gutters, and water-courses aforesaid effectually made, scoured, cleansed, and opened, and such trunks, tunnels, plats, and bridges made and laid, and such hedges properly cut and pruned; within 20 days after such notice, then the surveyor shall do the same, and the person neglecting shall forfeit for every foot in length so neglected, one penny, and over and above the said forfeiture, the surveyor shall by such person be reimbursed his charges and expences in doing the same; and if not paid on demand, the surveyor shall apply to a justice, and on making oath before him of the notice being given as aforesaid, and of the work being done, and of the expences attending the same, the surveyor shall be repaid by such person all such charges as shall be allowed to be reasonable by the said justice (I); and if not paid on demand, the same shall be levied as other penalties and forfeitures by this act. *f. 12.*

Surveyor to give notice and cause defects to be amended.

If any person shall wilfully set or leave any waggon, cart, or other carriage, or any plough or instrument of husbandry in any highway, (except only with respect to such waggon, cart, or carriage, during such reasonable time as the same shall be loading or unloading, and standing as near the side of

Carriages or implements of husbandry left in the highway.

Drivers of car-
riages misbe-
having.

of such highway as conveniently may be,) so as to interrupt or hinder the free passage of any other carriage, or of his majesty's subjects; he shall forfeit 10s. *f. 11.*

By the 1 G. 2. c. 57. If any person, driving any cart, dray, or waggon in the streets of *London*, shall ride upon the same, not having some other person on foot to guide the same, he shall on conviction before the alderman of the ward, or a justice of the peace, on oath of one witness, forfeit 10s. by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction, there to be kept to hard labour for three days. *f. 8.*

And by the 24 G. 2. c. 43. If any carter, drayman, carman, waggoner, or other driver shall ride upon the same in *London*, or within ten miles thereof, not having some other person on foot to guide the same, he shall on the like conviction, forfeit 10s. in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding 20s. To be recovered, levied, and applied; as by the aforesaid act of the 1 G. 2. c. 57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall resist, abuse, or prevent any person endeavouring to apprehend such offender, or when he is apprehended, shall rescue, or endeavour to rescue him, he shall forfeit 20s. in like manner. *f. 8, 9.*

By the 30 G. 2. c. 22. If the driver of any carriage within *London* or *Westminster*, or in any public street, or common highway within the bills, shall by negligence or wilful misbehaviour interrupt the free passage of his majesty's subjects, he shall on conviction by confession or oath of one witness, before one justice, forfeit any sum not exceeding 20s. or be committed to the house of correction, or some other prison of the place where the offence shall have been committed, or the offender shall have been apprehended, there to be kept to hard labour for any time not exceeding one calendar month. The said forfeiture to be levied by distress by warrant of such justice; and to be half to the prosecutor, and half to the overseers for the use of the poor of the parish or place where the offence shall be committed, or the offender shall be apprehended; and if there be no overseer, then to some other officer for the use of the poor as aforesaid. *f. 7, 12.*

Any person, who shall see any offence committed against this act, may by authority of this act, and without any other warrant apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or

other

other peace officer of the place where the offence shall be committed, or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law. *f. 13.*

And if he shall refuse to discover his name and place of abode to the justice before whom he shall be brought, he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode to the said justice, or to some other justice of such place. *f. 11.*

Any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed. *f. 14.*

Provided, that persons punished by this act shall not be punished by any former law. *f. 15.*

And more generally, by the 13 G. 3. c. 78. Whereas many bad accidents happen, and great mischiefs are frequently done upon the streets and highways, by the negligence or wilful misbehaviour of persons driving carriages thereon, it is enacted, that if the driver of any cart, car, dray, or waggon shall ride upon any such carriage in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same, excepted;) or if the driver of any carriage whatsoever, on any part of any street or highway, shall by negligence or wilful misbehaviour cause any hurt or damage to any person or carriage passing or being upon such street or highway; or shall quit the highway, and go on the other side of the hedge or fence inclosing the same; or wilfully be at such distance from such carriage, whilst it shall be passing upon the highway, that he cannot have the direction and government of the horses or cattle drawing the same; or shall, by negligence or wilful misbehaviour prevent, hinder, or interrupt the free passage of any other carriage, or of his majesty's subjects on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; or if any person shall drive, or act as the driver, of any such coach, post-chaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name (as by this act is directed) painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriage; he shall on conviction by confession, view of the justice,

justice, or oath of one witness before one justice, forfeit any sum not exceeding 10s. in case such driver be not the owner of such carriage, and if he be the owner, then any sum not exceeding 20s.; and in default of payment be committed to the house of correction for any time not exceeding one month, unless the same be sooner paid. And every such driver offending in either of the said cases may by authority of this act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed or delivered to a constable or other peace officer, to be conveyed before a justice, to be dealt with according to law. And if any driver, in any the cases aforesaid, shall refuse to discover his name, the justice may commit him to the house of correction for any time not exceeding three months, or may proceed against him for the penalty by a description of his person and the offence, and expressing in the proceedings that he refused to discover his name. *s. 60.*

The owner's name and place of abode to be put on carriages.

And for the better discovering of offenders, the owner of every waggon, wain, or cart, and also of every coach, post chaise, or other carriage, let to hire, shall cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post-chaisses, or other carriages, before the same shall be used in any publick highway, his christian and surname, and place of abode, in large legible letters; and continue the same thereupon so long as such carriage shall be used upon any highway: And the owner of every common stage waggon or cart employed as travelling stages from town to town, shall, over and above his christian and surname, cause to be painted on the part and in the manner aforesaid, the following words, *common stage waggon or cart*, as the case may be. And every person using any such carriage as aforesaid upon any highway, without the said names and descriptions respectively, or cause to be painted thereon any fictitious name or place of abode, shall forfeit not exceeding 5l. nor less than 20s. *s. 59.*

[See vol. 5. title Post, Sect. IV. for enactments relative to the misconduct of drivers of public coaches.]

Alehouses not to be near bridges.

And for preventing obstructions near public bridges, if any person, collecting any tolls payable for passing over any public bridge with carriages or cattle of any kind, shall keep any victualling-house, alehouse, or other place of public entertainment, or shall sell or permit to be sold therein any wine, beer, ale, cyder, spirituous liquors, or other strong liquors by retail, he shall, on conviction before one justice by confession or oath of one witness, forfeit 5l. *s. 62.*

IX. *Direction posts, blocks, milestones, water marks, and battlements of bridges.*

The justices at a special sessions held for the purposes of this act, shall issue their precept (O) to the surveyor, for any parish, &c. where several highways meet, and there is no proper or sufficient direction post or stone already fixed or erected, requiring him forthwith to cause to be erected or fixed in the most convenient place where such ways meet, a stone or post, with inscriptions thereon, in large legible letters painted on each side thereof, containing the name or names of the next market town or towns, or other considerable place or places to which the said highways lead; and also at the several approaches or entrances to such parts of any highways, as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part of the same, and likewise such direction posts or stones as the said justices shall judge to be necessary for the guiding of travellers in the best and safest tract through the said floods or waters; and if he shall refuse or neglect, by the space of three months to cause such stones or posts to be fixed, he shall forfeit 20s. 13 G. 3. c. 78. s. 26.

Direction posts.

And whereas in some places it may be necessary to secure horse and foot causeways by posts, blocks, or great stones fixed in the ground, or by banks of earth cast up or otherwise from being broken up and spoiled with waggons, wains, carts, or carriages; and forasmuch as divers evil disposed persons do wilfully or wantonly pull up, cut down, and remove or damage the said posts, blocks, and great stones, and drive carriages upon such banks and causeways, or against the sides thereof, and also dig or cast down the said banks, whereby the causeways or banks are often ruined and destroyed; and such evil disposed persons do or may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges; and pull down, destroy, obliterate or deface any mile stone; or post graduated, or direction post, or stone erected upon any highway; for prevention thereof, it is enacted, that every person who shall be guilty of any such offence shall upon conviction before one justice, by the oath of one witness, or upon view of the justice, forfeit not exceeding 5l. nor less than 10s.; and in default of payment shall be committed to the house of correction, there to be whipped and kept to hard labour for any time not exceeding one calendar month, nor less than seven days. s. 52.

Horse and foot causeways.

Destroying parapets, battlements of bridges, or milestones.

[It were much to be wished, that every town or village should be compellable to notify, either on the market place, church, or other obvious place, the name of such town or village, and its relative distance from the adjacent market-towns, as well from the metropolis. It were also to be wished that the penalty in the above clause extended to persons riding on horseback over foot causeways.]

X. *Breadth of wheels, and number of horses.*

Breadth of wheels and number of horses.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowness of the wheels of the several carriages travelling thereon, and by the excessive burdens loaded in such carriages, it is enacted that no waggon, having the sole or bottom of the fellys of the wheels of the breadth of nine inches, shall be drawn with more than eight horses; and no cart, having the sole or bottom of the fellys of the wheels of the breadth of nine inches, shall be drawn with more than five horses:

And no waggon, having the sole or bottom of the fellys of the wheels of the breadth of six inches, and rolling on each side a surface of nine inches, shall be drawn with more than seven horses.

And no waggon, rolling a surface of six inches only, shall be drawn with more than six horses; and no cart, having the sole or bottom of the fellys of the wheels of the breadth of six inches, shall be drawn with more than four horses.

And no waggon, having the sole or bottom of the fellys of the wheels of less breadth than six inches, shall be drawn with more than five horses; and no cart having the sole or bottom of the fellys of less breadth than six inches, shall be drawn with more than three horses;

On pain that the owner shall forfeit 5*l.*, and the driver (not being the owner) 10*s.*, for every horse or beast above the number respectively, to the sole use of the informer. 13 G. 3. c. 78. s. 55.

But carriages moving upon wheels or rollers of the breadth of 16 inches on each side thereof, with flat surfaces, shall be allowed to be drawn with any number of horses or other cattle. *Id.*

Provided, that no prosecution shall be commenced before a justice against such owner or driver, unless the information be laid within three days; and no action shall be commenced unless within one calendar month after the offence committed; and neither information nor action shall be brought; unless notice be given by the informer to the driver, on the day whereon the offence shall be committed,

of

of an intention to complain of such offence: And if it shall appear to the justice before whom the complaint shall be made that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, the said justice may dismiss the complaint, and leave the informer to his remedy by action at law. *f. 56.*

Exception as to steep hills.

And provided always that the justices at the *Michaelmas* quarter sessions may license in such manner and for such time as they shall think fit an increase in the number of horses to be drawn in carriages up any steep hill, or on any road not turnpike, over and above the number herein before limited; and from time to time at any *Michaelmas* quarter sessions, may revoke, alter, or vary the same as they shall think fit. *f. 57.*

And provided that if it shall appear upon the oaths of credible witnesses to the satisfaction of any justice of the peace, or of any court of justice authorized to enforce the execution of this act, that any waggon, cart, or carriage could not by reason of deep snow or ice be drawn by the number of horses or beasts of draught hereby allowed; they may stop the proceedings before them for recovery of the forfeiture. *f. 58.*

And snow and ice.

Provided also, that nothing herein, concerning the number of horses and wheels of carriages, shall extend to carts, waggons, or other carriages employed only in carrying any one stone, block of marble, cable, rope, or piece of metal, or piece of timber, or to such ammunition or artillery as shall be for his majesty's service. *Id.*

And large stones, &c.

And for all the purposes of this act, two oxen or horned cattle shall be considered as one horse. *Id.*

With respect particularly to the cities of *London* and *Westminster*, and parts adjacent, it is enacted by the 6 G. c. 6., that no person in *London* and *Westminster*, or within 10 miles thereof, shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 sacks of meal of five bushels each, nor more than 12 quarters of malt, nor more than 700½ of bricks, nor more than one chaldron of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, in such manner and to such uses, as by the 5 G. c. 12. (now repealed.)

Regulations in London and Westminster.

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the waterside; on pain of 40s. by warrant of one justice, by distress; and for want of distress, on non-payment, in six days after demand, to be committed

till paid : but this not to extend to any country cart or waggon that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XI. *Breadth, widening, changing, and diverting highways.*

Highways may be changed by a writ of *ad quod damnum*.

By the common law an ancient highway cannot be changed, without the king's license first obtained upon a writ of *ad quod damnum* and an inquisition thereon found, that such a change will not be prejudicial to the public : and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases ; and it seemeth that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out ; also it is said that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw. c. 76. f. 3.*

Appeal.

But by the 13 G. 3. c. 78. Where any highway shall be inclosed by virtue of any inquisition taken upon any writ of *ad quod damnum* issued, any person that shall think himself injured by such inclosure may appeal to the next general quarter sessions after such order made or proceeding had, upon giving ten days' notice in writing to the surveyor and party interested in such inclosure, if there be time for that purpose ; if not, to the next sessions after, who shall hear and finally determine the same. *f. 19.* [See this section 19. more at length, *post*, p. 742.]

[Note ; The writ of *ad quod damnum* is an original writ, issuing out of and returnable into the chancery, directed to the sheriff to enquire by a jury whether such change will be detrimental to the public ; which inquisition, being a proceeding only *ex parte*, is in its own nature traversable, and heretofore the party grieved might be heard against it before the chancellor ; but now, by this act, jurisdiction is given to the justices in sessions to hear and determine appeals concerning the same.]

Where a new road is made in pursuance of such writ and inquisition thereupon found, after the person who sued

out the writ hath once made the said road, the parishioners ought to keep it in repair for the future; because, being discharged from the repairing of the old road, no new bur- den is laid upon them, but their labour is only transferred from one place to another. 3 *Atk.* 766.

But if the new road lie in another parish, then the per- son who sued out the writ and his heirs ought not only to make it, but to keep it in repair; otherwise the parishioners of such other parish would have a new charge upon them, and no recompence by the former road being taken away. *Id. Venner v. Lucy, Jan. 29. 1764.*

An order made by justices of the peace under the stat. 13 G. 3. c. 78. f. 19. for stopping up an old foot-way and setting out a new one must follow the form prescribed in the schedule annexed to the act, and set forth the length and breadth of the new foot-way; otherwise it is no answer to a justification of a right of way pleaded to an action of trespass brought by the owner of the soil over which the old way led. The statute requires that the form set forth in the schedule "shall be used on all occasions with such additions and variations *only* as may be necessary to adapt it to the par- ticular exigency of the case." Under these words a ma- terial variation from the form prescribed is fatal, and may be taken advantage of in a collateral proceeding. *Davidson v. Gill. 1 East's R. 64.*

Also, it is certain that a highway may be changed by the act of God; and therefore it hath been holden that if a water which has been an ancient highway by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old. 1 *Haw. c. 76. f. 4.*

Or by the act
of God.

An highway inclosed by virtue of a special act of parlia- ment (for dividing and inclosing common fields, common pastures, or the like,) shall continue to be repaired by the parish or township as it was before, unless otherwise directed by the act: for if he who inclosed the ground adjoining to the highway were in such case obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. 1 *Bur. 461. R. v. the Inhabitants of Flecknow. H. 30. G. 2.* See *ante*, this title, Seet. IV. (1.)

Or by act of
parliament.

In aid of the common law, and to render the changing of highways less troublesome and expensive, power is given by the 13 G. 3. c. 78. to the justices of the peace to widen, divert, and change highways, as they shall judge most convenient.

Or by two jus-
tices.

When two justices may widen a highway.

In order to which, it is enacted, that the surveyor shall make, support, and maintain every public cartway leading to any market town 20 feet wide at the least, and every public horse way or drift way eight feet wide at the least, if the ground between the fences inclosing the same will admit thereof. And where it shall appear upon the view of two justices that any highway between the fences thereof is not of sufficient breadth, and may be conveniently widened and enlarged, or that the same cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same, the said justices shall order (P) such highways respectively to be widened and enlarged, or diverted and turned, in such manner as they shall think fit, so that the said highways when enlarged and diverted shall not exceed 30 feet in breadth, and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, park, paddock, court, or yard. *s.* 15, 16.

Satisfaction to be made to the owner of the ground.

And for satisfaction of the person or persons, bodies politic or corporate, who are seised or possessed of or interested in their own right or in trust for any other in the ground that shall be laid into the said highways so to be enlarged, or through which such highway so to be diverted and turned shall go, the said surveyor, under the direction and with the approbation of the said justices, shall make an agreement with them for the recompence to be made for such ground, and for the making such new ditches and fences, as shall be necessary, in proportion to their several interests, and also with any other person, body politic, or corporate, that may be injured by the enlarging or diverting such highways as aforesaid. And if the said surveyor cannot agree with them, or if they cannot be found, or shall refuse to treat or to take such recompence as shall be offered by the surveyor, then the justices, at any general quarter sessions, upon certificate in writing (Q) signed by the justices who made such view of their proceedings in the premises, and on proof of 14 days' notice in writing, having been given by the surveyor to the owner, occupier, or other person or body interested in such ground, or to his or their guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions for the purposes of taking such ground, — shall impanel a jury out of the persons returned to serve at such sessions; and the said jury shall upon their oaths assess the damages to be given and recompence to be made to the owners and others interested in the said ground, as they shall think reasonable, not exceeding 40 years' purchase for the clear yearly value of the ground; and likewise such

such recompence as they shall think reasonable, for making new ditches and fences on the side or sides of the said highways that shall be so enlarged or diverted; and also satisfaction to any person or body that may be otherwise injured by the enlarging or diverting the said highways respectively. *f. 16.*

If the jury shall give a verdict for more money than was offered by the surveyor before the application to the sessions, the costs attending the several proceedings shall be paid by the surveyor out of the money in his hands or to be levied under this act: But if the jury shall give a verdict for no more, or for less than was offered by the surveyor, then the costs shall be paid by the person or body who refused to accept the satisfaction so offered to him as aforesaid. *f. 18.*

And on payment or tender of the money so to be awarded, or leaving it in the hands of the clerk of the peace if the party entitled to receive it cannot be found, or shall refuse to accept it, the interest of such person or body in the said ground shall be divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway, to all intents and purposes. *f. 16.*

Saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same, which may be got without breaking the surface of the highway, and also all timber and wood growing upon such ground, to be fallen and taken by such owner, within one month after such order made; or in default thereof, to be cut down by the surveyor within the respective months aforesaid, and laid upon the land adjoining for the benefit of the owner. *Id.*

Where there is not sufficient money in the hands of the surveyor, the said two justices in case of agreement, or the said quarter sessions after such verdict as aforesaid, shall order an equal assessment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the parish, township, or place where such highway lies; and if not paid in ten days after demand, the same shall by order of the said justices or court of quarter sessions respectively, be levied by the surveyor in the manner hereinafter mentioned. Provided, that no such assessment to be made in any one year shall exceed 6d. in the pound of the yearly value of the lands, tenements, woods, tithes and hereditaments so assessed. *f. 16.*

Money to be raised for that purpose.

When any such new highway shall be made as aforesaid, the old way shall be stopped up and the land and soil thereof shall be sold by the surveyor, with the approbation of the said justices (R) to some person whose lands adjoin thereto, if he shall be willing to purchase the same; if not, to some other person, for the full value thereof. But if

Old way may be stopped up and the land sold, where a new way is made.

such old road shall lead to any lands, house, or place, which cannot in the opinion of such justices respectively be accommodated with a convenient way and passage from such new highway, in such case, the old highway shall only be sold, subject to the right of way and passage to such lands, house, or place respectively. And the money arising by the sale shall be applied towards the purchase of the land where such new highway shall be made. And on payment or tender of the money, and on a certificate signed by the said two justices, or by the chairman of the said court of quarter sessions respectively, describing the lands so sold, and expressing the sum so agreed for, and directing to whom the same shall be paid, and on the purchaser's taking a receipt for such purchase money from the person entitled to receive the same by an indorsement on the back of such certificate, the soil of such old highway shall become vested in such purchaser and his heirs. But all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person who would have been entitled to the same, if such old highway had continued there. *f. 17.*

Owner of the ground consenting to the exchange of a road.

And moreover, when it shall appear upon the view of two justices (S) that any public highway, not in the situation hereinbefore described, or public bridle way, or foot way, may be diverted, so as to make the same nearer or more commodious to the public, and the owner of the lands through which such new highway, bridle way, or foot way is proposed to be made, shall consent thereto by writing (T) under his hand and seal, it shall be lawful by order of the justices at some special sessions to divert and turn and to stop up such foot way, and to divert, turn, and stop up and inclose, sell, and dispose of such old highway or bridle way, and to purchase the ground and soil for such new highway, bridle way, or foot way, by such ways and means, and subject to such exceptions and conditions in all respects, as hereinbefore mentioned with regard to highways to be widened or diverted. And where any such highway, bridle way, or footway herein last-before described shall be so ordered to be stopped up or inclosed, and such new highway, bridle way, or foot way set out and appropriated in lieu thereof as aforesaid, it shall be lawful for any person injured or aggrieved by any such order or proceeding, or by the inclosure of any road or highway by virtue of an inquisition taken upon a writ of *ad quod damnum*, to appeal to the next quarter sessions after such order made, or proceeding had, on giving ten days' notice in writing to the surveyor and party interested in such inclosure, if there be sufficient time for that purpose; if not, then to the next sessions after upon the like notice; which courts respectively are hereby empowered

Inclosure by virtue of a writ *ad quod damnum*.

to hear and finally determine such appeal: And if no such appeal be made, or being made, such order and proceedings shall be confirmed, the said inclosures may be made, and the said ways stopped, and the proceedings thereupon shall be binding and conclusive to all persons whomsoever, and the new way shall be and continue a public highway, bridle way, or foot way to all intents and purposes, and the soil thereof sold in the manner and subject to the restrictions hereinbefore mentioned with respect to highways to be enlarged or diverted. But no inclosure or stoppage of such old way shall be made until the new way shall be completed, and put into good condition and repair, and so certified by two justices upon view, which certificate shall be returned to the clerk of the peace, and by him inrolled amongst the records. *s.* 19.

[*Note.* See 8 & 9 *W. 3. c. 16.* relative to writs *ad quod damnum*: it is however now repealed by the 7 *G. 3. c. 42.*]

Divert and turn] *Welch v. Nash. E. 47 G. 3.*—This was an action of trespass, and upon a special case reserved it appeared in substance, that an old highway had been stopped by the authority of two justices;—there being a consent by those through whose lands it was said the new road was intended to be *diverted and turned*;—next an order by two justices, stating that they had upon view found that the old highway might be commodiously *diverted and turned*, and that having viewed the course proposed for the new highway in lieu thereof, *along the said lane called Egg-lane*, (*Egg-lane* being the old highway,) and received consent, &c., they *ordered the said highway to be diverted and turned through and along the said lane called Egg-lane*, to the end thereof;—next a certificate, that the new highway was fit for travellers, and then an order for stopping up the old highway, &c. &c.—These orders were appealed against, and were confirmed upon the appeal.—After this the defendant came to the place where the road had been stopped up, and cut down the railing which had been placed along the side of a field belonging to himself, from which, before the road was stopped up, he passed by a gate into the road in question. On the part of the defendant it appeared, that the magistrates *had only widened the course of Egg-lane*, by throwing into it (on one side) those several pieces of land given up by the plaintiff; *but had not otherwise given it a new direction*; the other side remained unaltered. One of the magistrates by whom the order was made, though a justice for the county of *Worcester*, did not at that time reside in the hundred. This last circumstance was held by the court to be of no importance; the statute being in that respect only explanatory. Upon argument, the whole court agreed, that this was not such a *diverting or turning* an old road, nor making a new one, as was contem-

plated by the 10th section of the act, but that it was a mere enlargement of the old one. 8 E. R. 394.

Lawrence J. said, that the justices could not give themselves jurisdiction by finding that as a fact which was not the fact.

R. v. Justices of
Staffordshire.

Appeal to the next sessions, on giving ten days' notice] On this part of the statute a question has arisen whether the appeal must be made to the sessions next after the order for stopping up the old way, or after the party has notice of such order. In *R. v. the Justices of Staffordshire*, in 37 Geo. 3. an order for turning a road had been made three weeks before the Michaelmas sessions, which was returned to those sessions in order that it might be confirmed there: on the next day during the same sessions the appellant moved to enter his appeal against it, saying that he had had no notice of the order before the sessions, and therefore had not given the 10 days' notice of appeal required by the statute. The sessions having refused to receive the appeal, the appellant moved for a mandamus to the court of king's bench, calling on the justices of the county to receive the appeal as of the last sessions. *Perceval* shewed cause against the rule; and contended that the appellant either had or had not notice of the proceeding of which he complained ten days before the sessions. That if he had (and he was bound to take notice from the time when the old road was stopped up, it being an act of notoriety,) he ought to have given notice of appeal ten days before the sessions; and that not having done so, the sessions were not bound to receive his appeal. That if he were not bound to take notice of the order and of the turning of the road from the actual turning of it, and had no other notice of the proceeding before the sessions, he might appeal to the next sessions on giving the ten days' notice. The court refused the mandamus. They said, the application for a mandamus was founded on a supposition that the justices at the last sessions were guilty of negligence in not receiving the appeal: but the appellant, not having given ten days' notice of appeal before the last sessions, had no right to appeal. And he will not be prejudiced by the rule being discharged; because if he had no notice of this proceeding until the last sessions, the justices at the next sessions will be bound to receive his appeal then, on his giving the notice required by the statute. 7 T. R. 81.

R. v. Justices of
Pembrokehire.

It was not absolutely necessary to decide in the above case the great question whether the party should appeal to the sessions next after the order made or after notice of that order: but this question was more fully gone into in *R. v. the Justices of Pembrokehire*, *H. 42 G. 3. B. R.* There the order of the two magistrates for stopping up the old way was made on the 2d April 1801, on which day some labourers were employed by the surveyor to turn the old road and

make the new one. This order was recorded at the next sessions on the 15th of the same month, ten days before which time an agent and a tenant of *Lady Owen* (the party complaining of the order) saw the men at work on the road and said they had orders from *Lady Owen* to pull down the obstruction across the old road as soon as it was made. It was notorious in the parish that the labourers were working on the new road at the time: but the old road was not stopped up until several days before the 15th of *July* following (the *Midsummer* sessions), when a fence or frith was made across the same; this fence was in a few days afterwards destroyed by some persons unknown; and on the 31st of *July* the old road was completely stopped up, a bank being raised and a ditch dug across it. *Lady Owen* moved to enter an appeal against this order at the *Michaelmas* sessions in *October* following; but the sessions refusing to receive it, she applied to the court of king's bench for a mandamus to compel the justices at the sessions to receive her appeal on an affidavit by her solicitor that he believed that neither she or her agent had any notice or information of the order until the 17th of *July*. Against the mandamus it was contended, that *Lady Owen* was too late with her appeal, that she should have appealed at the *Easter* sessions, the order having been made ten days before, and her servants apprised of the transaction; or that at all events she should have appealed at the sessions in *July*, the order having been recorded at the *Easter* sessions, and consequently made public then. So that the party could not complain of surprise. *The counsel* in support of the rule argued that, on the true construction of the act, the party might appeal to the sessions next after the grievance, without regard to the date of the order; otherwise if an order were made, and the party had no notice of it until after the next sessions had passed, he would be concluded without having any opportunity of having his complaint heard. That in this case the road was not effectually obstructed until the 31st of *July*, and the appeal was made to the sessions then next. That the words of the act are "after such order made or proceeding had;" which latter meant a proceeding under the order. That though in the case of an order of removal the stat. 13 & 14 *Car. 2. c. 12. s. 2.* allows the party aggrieved by the judgment of the two justices to appeal, &c., the time of appeal is reckoned from the execution and not from the date of the order. But *the court* refused to grant the mandamus. — *Grose J.* said, it is unnecessary to determine in this case whether the appeal is given to the next sessions after the order made, or to the next sessions after the party is aggrieved; though I must observe that the words of the act are very strong, that the appeal shall

shall be made to the next sessions, "after such order made, &c." There are however other words, upon which stress has been laid. But at any rate I am satisfied that in this instance the appeal was not made to the next sessions after the party was aggrieved. The order was made on the 2d of April, and ten days before the *Easter* sessions Lady Owen's agent saw the labourers employed on the road, and threatened what she would do if it were stopped up. There is no affidavit by Lady Owen to deny that she had notice; and therefore we must presume that she had notice of all that was doing at that time. No appeal however was made till the *Michaelmas* sessions following, which cannot be considered as an appeal to the sessions next after the party was aggrieved. — *Lawrence J.* It cannot be said that the act gives the appeal to the next sessions after the party is aggrieved; for by the express words of it, "the party aggrieved by any such order or proceeding may appeal to the next sessions after such order made or proceeding had as aforesaid." It is clear that this appeal was not made to the sessions next after the order. Then the only question is, whether it were made to the sessions next after the proceeding; and what is meant by the term *proceeding* there used? It does not mean acts done under the order; but is used as some legal procedure similar to *order*: "Such order made or proceeding had as aforesaid," refers to the proceeding before the magistrates stated in the previous part of the act. Then it is said that the party ought to have notice, otherwise the power of appeal will be nugatory; but here there does appear to be notice. But upon the construction of the act, I see no other line to go by; otherwise it is difficult to say to what period an appeal might be deferred; it might be long after the order was executed; for the party might not have notice for months or years afterwards. — *Le Blanc J.* Upon either of the constructions contended for, the appellant came too late. For she neither appealed to the sessions next after the order made, nor to that next after notice had of it. The appeal is given to the "sessions next after such order made or proceeding had." There can be no doubt as to the first part; and the "proceeding" does not mean the stopping up of the road. In a former clause, "proceeding" is used as synonymous with order; and in the very same clause it is used in the same sense with order, and as distinct from the act of stopping up the road. 2 *East's Rep.* 213.

Highways having been turned above 12 months without an order.

And where any highway, bridle way, or foot way, hath been diverted and turned above 12 months, either from necessity, where the same hath been destroyed by floods or slips of the ground, or from other causes and motives, if a new way hath been made in lieu thereof nearer or more commodious

modious to the public, and the same hath been acquiesced in, and no suit or prosecution hath been commenced for the diverting or turning the same, such new way shall from henceforth be the public way to all intents and purposes whatsoever: And all persons liable to the repair of any such old highways, bridleway, or footway, shall continue liable to the repair of such new way, except where any agreement shall have been made relative to such repair between the parties interested, which hath laid the burthen thereof, or of any part thereof, upon any other person, in which case the same shall be observed. *f. 19.*

Hath been diverted and turned above 12 months] *Waite v. Smith* and another, *H. 39 G. 3.* was an action of trespass, tried before *Roske J.* at *York* assizes; a verdict for the defendants subject to the opinion of the court on the following case. At the time of committing the trespass the plaintiff was occupier of a close called *Higher Butts*, as tenant to *Mr. Bagshaw*. Previous to the year 1792, there was no common highway over the said close, and in that year the highway leading from *Barnoldswick* to *Thornton*, in the said county, was stopped by the *Leeds* canal being cut across it, and a new road was then made by the canal company across the said close, called *Higher Butts*, being then in the occupation of a different tenant, in the place of the highway so obstructed. The old road was so stopped up, and the new road made by the canal company, without any order or authority from any justices, and without the consent of *Mr. Bagshaw* for that purpose. In *Sept. 1792* *Mr. Bagshaw* was in *Craven* where the roads lie, and then knew of the new road having been made; he left *Craven* a few days after and continued absent till 1794. No complaint was made until he returned in 1794. No prosecution was commenced within a year after the road was so turned, the new road having been used by the public in lieu of the old road until the time of committing the trespass; and the new road is nearer and more commodious to the public than the old road. At the time when the trespass was committed, which was in the present year, the new road was stopped up by a gate and posts set across it; the defendants, who were servants to the canal company, pulled down the gates and posts by which the road was obstructed as aforesaid. The question was, Whether under these circumstances the new road is or is not a public highway? — For the plaintiff it was argued (*inter alia*) that the words in the above clause, *hath been diverted*, &c. “above 12 months, if a new highway *hath been* “made in lieu thereof, nearer or more commodious to the “public, and the same hath been acquiesced in, and no “prosecution commenced, &c., the new road shall from “hence-

“henceforth be the public way,” were intended to be retrospective only. — On the other side it was contended, that the above section was intended to have both a retrospective and prospective operation; and that the legislature thought that if a road had been turned over a man’s ground for above 12 months without any complaint on his part, it was a fair ground to presume that no injury was done to him, and that he had acquiesced in it. — *L. Kenyon Ch. J.* This case must depend on the true construction of the general highway act 13 G. 3. c. 78.; of which that put upon it by the plaintiff’s counsel is, I think, the true one. That a different construction would be productive of gross injustice is evident to every person who considers the subject; for if the defendant’s construction were to prevail, in every case of a minority, or of the absence of the owner, and even in other cases where the tenant chose to acquiesce in a new road being used, or to collude with those who used it, the using of it for a twelve-month would be conclusive evidence of the right against the owner of the land, though he had no means of preventing it, by bringing an action of trespass, not being in possession. The fair construction is that insisted upon by the plaintiff, and without commenting minutely on all the words used in the different sections, I think that the word “*henceforth*,” is not capable of receiving any other construction. If the words of the act were doubtful, and we were to consider which of the two constructions would work the least injustice, I should not hesitate to adopt the plaintiff’s construction; still less then ought we to hesitate, when by adopting the defendant’s construction we should violate all the rules of grammar. I am therefore most clearly of opinion, that that part of the 19th section which defendant’s counsel principally relied on is retrospective. — *Grose J.* This appears to me to be a most vexatious attempt on the part of the defendants to injure the plaintiff’s right of property. And on considering attentively the different words used in the sections of the act that have been pointed out, I am glad to find that it cannot be justified. The intention of the legislature is perfectly clear; they meant to give power to justices in certain cases to divert roads in future, and to put an end to all further disputes respecting those that had been turned, even without authority, provided the new roads had been used and acquiesced in for a twelvemonth before: but there was no reason why those that should be diverted without authority after the act passed should be considered as legally diverted under the act, because whenever it should be thought by those who are competent to decide upon the subject that another road may be nearer or more commodious to the public, that act gives authority to two justices to divert it under

under certain circumstances. All the expressions in the different sections of the act are carefully used to express that intention, and to mark the difference between the future and the past. — Mr. J. *Lawrence* said, it is impossible to raise a doubt on the grammatical construction of the words used in the different clauses of the act. And I will not, for the purpose of working manifest injustice, read “thenceforth” for the word “henceforth.” *Posse* to the plaintiff. 8 T. R. 133.

And if in any parish or place where a highway shall be diverted and turned by virtue of this act, it shall appear to the justices that there are *other* highways within such parish or place, besides that so to be diverted and turned, which may without inconvenience to the public be diverted into such new highway, or into any other within the same parish or place, and the charge of repairing the same may be thereby saved, the said justices may order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, and such right of appeal, as hereinbefore directed concerning highways to be stopped up or inclosed. 13 G. 3. c. 78. s. 22.

Unnecessary roads may be stopped up.

M. 23 G. 3. Page, esq. v. Howard. This was an action of trespass; the defendant pleaded the general issue. The cause was tried before L. *Mansfield* at the *Surrey* assizes, when a verdict was found for the plaintiff, subject to the opinion of the court upon the following case. In 1774 a road in the parish of *Cobham* in *Surrey*, leading towards *Ockham* in the said county, was lawfully diverted and turned by an order of two justices, by virtue of 13 G. 3. c. 78. s. 19. In June 1782 another road (the place where the trespass was committed) in the said parish of *Cobham*, leading towards *Hockham*, and also towards *Chertsey Byfleet*, and other places, was stopped up by an order of one of the said justices and another justice of the said county, under the powers given by s. 22. of the said act; and a gate was erected and locked up by the plaintiff across the road so stopped up in 1782; and the defendant broke down the same. — *Quere*, Whether the justices under the said act, s. 22., had a power to make the said order for stopping the road where the trespass was committed? If they had, the verdict to stand; if not, to be entered for the defendant. For the plaintiff it was contended that the legislature meant to give an original jurisdiction to the magistrates who acted under s. 22.; that the power thereby given was a substantive power, and independent of the former clause; that if it must be the act of the same magistrates, it must be done at the same time also; and if it is taken to be at the same time, it would in its consequences

But in cases only where a new road is set out
Page v. Howard.

sequences be absurd; for at the time of diverting the roads it may not be possible to foresee what roads it may be necessary to stop up; and that by the express terms of the prior clause it is only where a road has first been diverted, that any authority is given to stop them. For the defendant it was insisted, that the power given by the latter clause was not substantive, but merely auxiliary of the former; that it must be exercised at the same time, and by the same justices, and not at any distance of time by others; that if the words were more doubtful, the analogy from the course of proceeding under the act afforded so clear an illustration of the sense of the legislature, as to remove every difficulty upon the question; that the act directs, that the money arising from the sale of the road stopped up, shall be applied to purchase the land where the new highway shall be made; that this was now impossible; that it did not appear that there was here any new road to be purchased; that if a new set of magistrates might now, at the end of eight years, interfere, they might at the end of 800; that the subsequent clause therefore was plainly referable to the prior; and that the powers which it gave could be exercised by those only who enforced the former. — *L. Mansfield*: However we may agree that it might have been better if the necessary remedy had been extended to both cases, yet upon looking into the act of parliament, we think we cannot be warranted in putting such a construction. This is not a general power, but tied up to a particular case. The power to shut up roads is given only where there is a new road to be set out. This shews that it was meant to be one entire act of the magistrates; that the two clauses make one provision, and that the powers under them were to make but one transaction; the clauses are so connected, that they cannot be separated. The other judges concerning, *postea* to defendant. *Cald. Cas.* 228.

Common lands
lying near a road
to be stopped up.

Provided, that no common land, lying between the fences of any old highway to be stopped up or inclosed by virtue of this act, shall be inclosed. And where the same, not being common land, shall upon a medium exceed 30 feet in breadth, and not extend to 50 feet, the same shall not be stopped up or inclosed until satisfaction be made to the owner for so much as shall exceed the breadth of 30 feet; and if the parties cannot agree, the same shall be adjusted by the said justices, or the jury, if a jury be impannelled. And if it shall exceed 50 feet in breadth, or if the old road be through the open field or ground belonging to any particular person, such person, and also the person or persons entitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land and soil of

of such old highway, and pay to the surveyor so much as shall be agreed on between the parties, or if they cannot agree, then so much as shall be adjudged by the said justices or jury, if a jury be impannelled, to be adequate to the purchase, estimating such highway at 30 feet in breadth upon an average. *f. 20.*

And where any footway shall be diverted by this act, through the land belonging to the same person who owned the land through which such old footway lay, the same shall be deemed an exchange only; and no satisfaction shall be made, unless the land for the new footway be of greater length and of greater value than the land used for the old footway. And where the footway shall not be turned through the lands belonging to the same person, the damage which had been occasioned by the old footway to the lands through which it lay, if the parties interested shall not agree in adjusting the same, shall be adjudged by two indifferent persons, one to be named by the owner of the land, and the other by the said two justices; and if the persons so to be nominated cannot agree therein, they shall chuse some third person to adjudge the same, whose determination shall be final. And the money at which such damages shall be assessed shall be applied in making satisfaction to the owner of the land through which such new footway shall be made.

Footway
diverted.

f. 21.

[For the repairs of a way turned or diverted, see *Highways*, turnpike, Sect 13.]

XII. *Assessments how to be made.*

For reimbursing expences for purchasing materials, and making satisfaction for damages in getting and carrying the same away;—erecting guide posts, or other posts, or stones;—making or repairing trunks, tunnels, plats, bridges, or arches;—for damages done to lands by making new ditches and drains;—and for the salary to be paid by the parish, township, or place to the surveyor; upon application by the surveyor to the justices at a special sessions, and oath made of the sums he hath *bonâ fide* laid out, or which will be required for the purposes aforesaid, the said justices, or two of them, shall by their warrant under their hands and seals, cause an equal assessment to be made upon all occupiers of lands, tenements, woods, tithes, and hereditaments, to be made and collected by such person or persons, and allowed in such manner as the said justices by their order at such sessions shall appoint; and to be levied as is hereinafter directed. 13 G. 3. c. 78. *f. 30.*

Assessment for
special purposes.

Provided,

Provided, that no such assessment for those or any of those purposes, in any one year, shall exceed the rate of 6d. in the pound of the yearly value. *Id.*

General assess-
ment.

If upon application of the surveyor to the justices at their general or quarter sessions, or at a special sessions for the highways, the said justices shall be fully satisfied by proof upon oath that the duty hath been performed, and the money applied and expended according to the directions of this act, or shall be fully satisfied that the common highways, bridges, causeways, streets, or pavements, belonging to the parish, township, or place, are so far out of order that they cannot be sufficiently amended and repaired, paved, cleansed, and supported by the means hereinbefore prescribed (notice being first given (U) of such intended application at the church or chapel on some *Sunday* preceding such quarter or special sessions, or, if the place be extra-parochial notice in writing being first given of such intended application to some of the principal inhabitants residing in such extra-parochial place, a week at least before such general or special sessions); — in such case, an equal assessment upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within any such parish, township, or place for the said purposes may be made and collected by such person and allowed in such manner as the said justices by their order (V) at such general or special sessions shall direct. *s.* 45.

The whole not
to exceed 9d.
per pound.

Provided, that the said assessment, and the assessment hereinbefore authorized for buying materials, making satisfaction for damages, erecting guide posts, and paying the surveyor's salary, shall not together in any one year exceed the rate of 9d. in the pound of the yearly value. *s.* 46.

An assessment of 6d. in the pound may also be made in the extraordinary case pointed out by section 16. (above.)

XIII. *Penalty of hindering the execution.*

If any person shall resist or make forcible opposition against any person employed in the execution of this act, or make any rescue of the goods distrained; or if any constable shall refuse or neglect to execute or obey any warrant of a justice, he shall, on conviction before one justice, forfeit not exceeding 10l., nor less than 40s. to be paid to the surveyor for the repair of the highways: if not forthwith paid, or secured to be paid after conviction, the justice shall commit him to the common gaol or house of correction for any time not exceeding three months, unless the forfeiture be sooner paid. *s.* 71.

XIV. *Penalty*

XIV. Penalty of the surveyor for neglect of duty.

If any surveyor, after his acceptance of the office, shall neglect his duty in any thing required of him, for which no particular penalty is imposed, he shall forfeit not exceeding 5l., nor less than 10s., at the discretion of the justice or justices having jurisdiction therein. 13 G. 3. c. 78. s. 50.

XV. Surveyor's account.

(1) The surveyor for every parish, &c. shall diligently collect the several assessments, forfeitures, penalties, sums of money, and compositions, directed and allowed to be received within the same by this act, within the year for which he is appointed surveyor;

To collect the assessments within the year.

(2) And shall keep a book, in which he shall enter a just and true account of all such money as shall have come to his hands, or to the hands of the said assistant, and to whom, and on what occasion, he hath paid or applied the same;

To keep a book, and enter account of monies received and paid;

(3) And also shall enter in such book a list of all such sums of money as shall then remain due and owing from any person or persons, in respect of the payments, compositions, assessments, penalties, or forfeitures;

and of monies due;

(4) And also an account of all tools, materials, implements, and other things provided by order of the inhabitants, at a vestry or other public meeting, for the repair of the highways, at the public expence of such parish, township, or place;

and of implements;

(5) And shall produce the book and the assessments made in that year to the inhabitants at a vestry or other public meeting to be held for that purpose within 15 days before the special sessions to be holden in the week next after Michaelmas quarter sessions; to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants.

and produce the book at a public meeting;

(6) And after the said book and assessments shall have been produced at such meeting, he shall take the same to such justice and on such day and at such hour as shall be agreed upon at such meeting, some day after such meeting and before such last mentioned special sessions; and then and there verify such account, or any part thereof, upon oath (W), if required.

and verify his accounts upon oath before a justice;

(7) And such justice may allow such account (X) if he find it just, or postpone it until such special sessions, if he find cause for so doing, in which case it may be settled and

which may be allowed by the justice, or postponed to the special sessions.

allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions; and in case any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, they may disallow the same.

Clerks' fee.

(8) For the account examined and taken, and oath administered, the justices' clerks shall have the sum of 1s. and no more. 13 G. 3. c. 78. s. 48.

Books then to be delivered to a churchwarden or overseer, or principal inhabitant, and a duplicate thereof to the succeeding surveyor;

(9) When the said accounts shall be so settled and allowed, or disallowed as aforesaid, all such books and assessments shall be transmitted to the churchwarden or overseer of the poor of such parish, township, or place, or if the place be extraparochial, then to some principal inhabitant thereof; to be kept for the use of such parish, township, or place: And the said surveyor shall forthwith deliver a duplicate of such book and account, together with all sums of money as shall remain in his hands, and likewise all tools, materials, implements, and other things as aforesaid to the succeeding surveyor, if any new surveyor shall be appointed; or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor in the succeeding year. *Id.*

Succeeding surveyor may collect arrears.

(10) The succeeding surveyor may recover, collect, and receive all sums of money due and owing as aforesaid, as the preceding surveyor could or ought to have done. *Id.*

Surveyor neglecting his duty.

(11) And if such surveyor shall neglect to provide such book, or to enter such accounts and lists therein, or to deliver the said book and such duplicate thereof, and such assessments, tools, materials, implements, and other things, in the manner aforesaid, he shall forfeit not exceeding 5l. nor less than 40s. And if he shall make default in the paying or accounting for the money so remaining in his hands within the time, and according to the directions aforesaid, he shall forfeit double the money which shall be adjudged by the said justices to be in his hands. *Id.*

Surveyor dying.

(12) If the surveyor shall die before such accounts and lists be made out, or such money, book, assessments, tools, materials, and implements shall be so delivered and paid, his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty, as the surveyor was liable and subject to. *Id.*

Vid. post, head *Appeal*, this title.

XVI. Presentment or indictment of highways in general.

(And see *ante*, *Prescription*, this title.)

(Y.)

All defects of repairs of highways shall be presented in the county where they lie, and not elsewhere.

R. v. Winter. H. T. 51 G. 3. A presentment preferred at the sessions for the county of *Somerset*, set forth that Sir J. *Lethbridge*, Bart. one of the justices, &c. assigned for the purposes aforesaid, by virtue of an act made in the 13 G. 3. c. 78. for the amendment and preservation of the highways, upon his own view doth present, that from time whereof, &c. there was and yet is a certain common and antient footway leading, &c. stating the road and the nuisance committed by the defendant, by digging a certain trench (giving the length and breadth,) and the same trench so dug, &c. in and along the said part of the said common and antient footway aforesaid, from the said 1st of *Sept.* 49 G. 3. until the making of this presentment, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did continue, by reason whereof the said common and antient footway was greatly damaged, &c. and concluding to the great damage and common nuisance of all the king's subjects, &c. and against the peace, &c. This presentment was removed into this court by *certiorari*; and after a verdict of guilty, it was moved to arrest the judgment on these grounds. 1st. That the word *footway* is by the stat. 13 G. 3. c. 78. contrasted with the general description of *highway*, and therefore the jurisdiction to present *highways* given to magistrates by the 24th sect. does not extend to *footways*. 2dly. That the presentment does not pursue the words of the act, which no where prohibits the digging of a *trench*. 3dly. It is not alledged that the nuisance was committed within 15 feet of the center of the highway, without which it is not presentable under the act. 4thly. That part of the footway presented is not said to be within the parish of *Bishop's Lydiard*, in the county of *Somerset*, but is only described as "a certain footway, leading from the village of *Eastcombe*, "within the parish of *Bishop's Lydiard*, towards and unto "the parish church of the same parish;" the termini may be in the parish, and yet the nuisance may have been committed by the defendant in another parish and county. 5thly. The offence is not charged to be against the statute. The court granted a rule *nisi*, but gave no opinion finally upon any of the objections except the last.

The court, without hearing any arguments upon the other objections were of opinion that the presentment was bad for want of charging the offence to be against the form of the statute; the clause giving the magistrate authority to present was confined in the terms of it to offences committed and done contrary to the provision and intent of the act, and therefore whatever the offence might be it was only presentable by a magistrate as an offence against the act; and as to the form of presentment given in the schedule it was confined to non-repair. Rule absolute. 13 *E. R.* 258.

Parish lying in
two counties.

If a parish lie in two distinct counties, an indictment must be brought against the whole parish. It was held indeed in a case in 5 *Burr.* 2507, that in such a case the indictment should be against that part of the parish in which the road lies. See *R. v. Great Broughton. Burr.* 2700, *ante*, *Prescription*, this title.

But the contrary was ruled on great consideration in the case of *R. v. the inhabitants of that part of the parish of Clifton* which lies in the county of Gloucester, *H.* 34 *G.* 3. There it was determined by *L. Kenyon*, *Buller J.* and *Grose J.*, against the opinion of *Mr. J. Ashburst*, that where a parish is situate, part in one county and the rest in another, and a highway lying in one part, be out of repair, an indictment against the inhabitants of *that part only* is bad; and that the indictment should have been against the whole parish. 5 *T. R.* 498.

R. v. Hartford, T. 14 *G.* 3. Error from quarter sessions upon presentment by a justice, that from time, &c. and yet is a common highway from *Witton*, in the county of *Huntingdon*, to the village of *Hartford*, in said county, for all, &c. to pass and repass on foot *over a certain drain or ditch between the antient inclosures* within the parish of *Witton*, and the town of *Hartford*; but the same is broken, &c. and the inhabitants of *Hartford* ought to repair, &c.

Objection for plaintiff in error. The description of the road is too uncertain; but particularly it is not laid to be in the parish of *Hartford*, or any other parish; but *over a ditch between inclosures* within the parish of *Witton* and the town of *Hartford*. Lord Mansfield. It must be alleged to be in the parish, otherwise the parish is not bound to repair and therefore this presentment is clearly bad. *Per Cur.* Let judgment be reversed, *Cowp.* 111.

Must shew it to
be a highway.

The indictment must shew that the way is common to all the king's people; for which cause, it hath been resolved that an indictment for a nuisance to a horseway, without adding that it is a highway, is naught. 1 *Haw. c.* 76, *f.* 89.

But it is not necessary to say it is a highway, for this or that particular carriage; for if it be a common highway, it is a highway for all manner of things. *Cases in the time of L. Hardwicke*, 316.

In the case of *Alpinall v. Brown*, E. 29 G. 3. the court held that, in indictments for nuisances in a highway, it is not necessary to state the highway to have been such *from time immemorial*, as great inconveniences would follow if it were otherwise; for strangers passing along the streets of London could not ascertain when they first became highways. 3 T. R. 265.

Need not be shewn when it became a highway.

It is more safe in the indictment to shew both the place from which and also the place to which the way supposed to be out of repair doth lead: yet exceptions for want of such certainty have sometimes been disallowed: However it seems certain that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. 1 Haw. c. 76. f. 86.

Not necessary to shew the places from and to which it leads.

In *Rouse v. Bardin* and others, H. 30 G. 3. C. B. The question was discussed how far it was necessary to state the bounds from and to which the road lay. To trespass for breaking and entering the plaintiff's close called *Brompton Heath*; the defendant pleaded a justification of a right of way, describing it to be a public common highway for all the subjects to pass on foot from a public king's highway leading from *Knightbridge* over *Brompton Heath*, unto another common public king's highway leading from *London* to *Fulham*. The evidence at the trial was that the public highway claimed led from the *Knightbridge Road* over *Brompton Heath* into a footway called *Church-lane*, and along that footway into the road from *London* to *Fulham*.—Lord *Loughborough*, who tried the cause, thinking this a variance between the plea and the evidence, as to the true description of the *terminus ad quem*, directed the jury to find a verdict for the plaintiff. But the court of common pleas set aside this verdict, and granted a new trial.—*Gould J.*, *Wilson J.*, and *Heath J.*, thought that in the case of a public highway, it was not necessary to state the places from and to which the way led, though it was otherwise in the case of a private way. But *Gould J.* said that if defendant took upon himself to set out the termini he was bound to prove them to be accurately described. They also thought that the evidence supported the plea of justification in this case. Lord *Loughborough* Ch. J. still adhered to the opinion he gave at the trial; and expressed his opinion that the termini should be stated in the case of a public as well as a private way. 1 H. Bl. Rep. 351.

Place where.

It is necessary in the indictment expressly to shew in what place the nuisance complained of was done; for which cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good, for it is impossible that a way leading from *D.* should be in *D.* and no other place is mentioned. 1 *Haw.* 219.

H. 30 G. 3. R. v. Inhabitants of Gamlingay. This was an indictment against the parish of *Gamlingay*, of a highway leading from the parish of *Hatley St. George* towards and unto the parish of *Gamlingay*, both in *Cambridgeshire*, which was determined to be bad; for the road is described as leading from *Hatley* unto *Gamlingay*, which excludes *Gamlingay*. 3 *T. R.* 515. It was also ruled that that defect was not aided by a subsequent allegation that a certain part of the same highway called *H.* situate in the said parish of *Gamlingay*, was in decay, &c.; and it has been decided, that from and to are both exclusive. *Id.*

This however seems by the principal case (*Battel v. Hastings*) to have been apparently so intended by the nature of the case.

Indictment
against particular
persons.

It hath been adjudged that an indictment against particular persons must specially charge them every one. 1 *Haw.* c. 76. §. 87.

Must set forth
how much is
out of repair.

It ought also certainly to shew, to what part of the highway the nuisance did extend; as by shewing how many feet in breadth it contained, or otherwise the defendant will never know the certainty of the charge against which he is to make his defence, nor will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved that the place is not sufficiently ascertained by shewing that it contained so many feet in length and so many in breadth, by estimation. *Id.*

Must set forth
the fact clearly.

Also, the fact must be expressed in such proper terms that it may clearly appear to the court to have been a nuisance; and for this cause it hath been resolved that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, however it may be obstructed, and a new way made in another place. *Id.*

Persons indicted
to have notice.

It seems to be implied in the construction of all penal statutes that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain that generally no one ought to be punished for any of the above-mentioned offences, without being called upon to answer for himself, and having liberty

liberty to traverse the matters alleged against him. *Ibid.* f. 83.

Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 1 *Mod.* 112. *Comb.* 396. *R. v. Iretton.*

Plea by a parish.

By an individual.

The same point was also ruled in *R. v. the Inhabitants of the city of Norwich*, 1 *Str.* 180, 183, 4.; where *Eyre J.* said, if a man would discharge himself on a particular account, he must plead it specially; but not where the common right is his defence. If a man is charged to repair *ratione tenuræ*, he may throw it upon the parish by the general issue.

The defendants ought not to plead that they ought not to repair, without shewing who ought. 1 *Haw. c.* 76. f. 93. To this point see *R. v. Inhabitants of Bridekirk*, ante, tit. *Prescription*, this title. (Also, see *post*, 767, *R. v. St. George's Hanover Square.*)

And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of not guilty, but ought to set forth their discharge in a special plea. 1 *Haw. c.* 76. f. 9.

It is no excuse for the inhabitants of a parish, being indicted at common law for not repairing the highways, that they have done all that is required of them by statute, for since these statutes are only in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. 1 *Haw. c.* 76. f. 18. So that at all events the parish may be compelled to make their ways good.

The defendants shall not be discharged by submitting to a fine, but a *distingas* shall go *in infinitum* till they repair. 1 *Haw. c.* 76. f. 94. Fine.

If the inhabitants of any parish, township, or place shall agree at a vestry or public meeting to prosecute any person by indictment for not repairing any highway within such parish, township, or place, which they apprehend such person was obliged by law to repair, or for committing any nuisance upon any highways, or shall agree at such vestry meeting to defend any indictment or presentment against them, the surveyor may charge in his account the reasonable expences thereof, after the same shall have been agreed to by such inhabitants at a vestry or public meeting, or allowed by a justice within the limit where such highway shall be. 13 *G. 3. c.* 78. f. 65.

Inhabitants at a meeting may agree to prosecute an indictment.

Meeting for the like purposes how to be ascertained.

And in all cases where a vestry or public meeting of the inhabitants of any parish, township, or place is directed by this act, public notice shall be given of the day, hour, and place of holding the same at the church or chapel on the Sunday next before: and also notice thereof in writing (a) specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel; and the same shall not be held till three days at least after such notice given. And if there be no church or chapel, the like notice shall be given in writing, and put up at the most public place therein, three days at least before such meeting. *s. 66.*

Costs on an indictment.

The court before whom any indictment or presentment shall be tried for not repairing the highways may award costs to the prosecutor, to be paid by the person indicted or presented, if it shall appear that the defence was frivolous; or costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear that the prosecution was vexatious. *s. 64.*

That the defence was frivolous] *T. 35 G. 3. R. v. Clifton.* The defendants were indicted for not repairing a road; on the trial before *Buller J.* they were convicted, and he certified on the back of the record that the defence was frivolous, without also awarding costs in express terms. But the court were clearly of opinion that there was no precise form of words to be used, and that this certificate was in effect an awarding of the costs. *6 T. R. 344.*

E. 33 G. 3. R. v. Chadderton. An indictment for not repairing a high road having been removed by *certiorari*, it went down for trial to the assizes, when the defendants were acquitted for want of prosecution. *Wood* moved for a rule on the prosecutor to compel him to pay the defendants their costs, on the ground that this was a *vexatious* prosecution, under the above act of 13 G. 3. c. 78. But *per Curiam*: The statute only gives the court, *before whom the indictment is tried*, power to award costs. An application should therefore have been made to the judge at *Nisi Prius*, who might have awarded costs to the defendants; but we have no such power. Rule refused. *5 T. R. 272.*

XVII. Presentment by a justice.

Justices may present on their own view.

Every justice of assize, justices of the counties palatine of *Chester, Lancaster, and Durham*, and of the Great Sessions in *Wales*, shall have authority upon their own view, and every justice of the peace either upon his own view, or upon information on oath given to him by the surveyor, to make presentment (b) at their respective assizes or Great Sessions,

or in the open general quarter sessions of the peace of any highway, causeway, or bridge not well and sufficiently repaired and amended, or of any other default or offence committed and done contrary to the provision and intent of this statute;

And all defects in the repair thereof shall be presented in the jurisdiction where the same do lie, and not elsewhere;

And every such presentment shall be as effectual, as if found by the oaths of twelve men;

Saving to every person affected by such presentment his lawful traverse for the same, as well with respect to the fact of non-repair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same presented and found by a grand jury;

May be traversed.

The justices at their general quarter sessions or the major part of them may, if they see just cause, direct the prosecution on such presentment as shall be made at the quarter sessions to be carried on at the general expence of such limit, and to be paid out of the general rates within the same;

Sessions may order the prosecution to be carried on at the expence of the division.

And for every such default so presented, the justices of assize, counties palatine, and Great Sessions, and justices of the peace at their respective courts, may assess such fines as they shall think meet:

And no such presentment, nor any indictment for any such default or offence, shall be removed by *certiorari* or otherwise, out of such jurisdiction, till the same be traversed, and judgment thereupon given; except where the duty or obligation of repairing may come in question. 13 G. 3. c. 78. s. 24.

Certiorari.

In the case of *R. v. Kettleworth*, M. 33 G. 3. it was determined that where a justice of peace *indicts* a road for being out of repair, (the indictment being afterwards removed by *certiorari*), he is entitled to costs under the 5 & 6 W. & M. c. 11. s. 3. if the defendant be convicted. 5 T. R. 33.

And according to *R. v. Penderryn*, where a magistrate makes a presentment of a road, as being out of repair, and another person by the magistrate's consent and approbation, sues out a *certiorari*, the *certiorari* is well sued out, though the court will look to the magistrate as the person responsible. 2 T. R. 260.

XVIII. *Levying of assessments, fines, and forfeitures.*

If any person shall refuse or neglect to pay the sum assessed upon him by any assessment in pursuance of this act, within ten days after demand thereof made, the same shall

Levying of assessments.

be

be levied by the surveyor or any other person authorised by warrant of one justice by distress and sale rendering the overplus, the necessary charges of distress (c) and sale being deducted, and in default of distress the justice may commit him (g) to the common gaol, there to remain until he shall have paid the sum so assessed, and the costs and charges occasioned by such neglect or refusal. 13 G. 3. c. 78. §. 67.

And the surveyor may in all cases be a witness, notwithstanding his salary may arise in part from the forfeitures and penalties. §. 68.

Fines.

No fine, issue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or presentment for not repairing the same, shall be returned into the exchequer or other court, but shall be levied by and paid to such person or persons residing in or near the parish, township, or place where the road shall lie, as the court imposing the same shall order, to be applied towards the repair of the highways. And the person or persons so ordered to receive such fine shall receive, apply and account for the same, according to the direction of such court, or in default thereof shall forfeit double the sum received. §. 47.

If any fine, issue, penalty, or forfeiture on any such parish, township, or place for not repairing the highways, or not appearing as aforesaid, shall be levied on one or more of the inhabitants, such inhabitant shall make his complaint to the special sessions; and the justices there shall by their warrant cause a rate to be made, according to the form and manner hereinbefore last prescribed for reimbursing such inhabitants; which rate so made and confirmed by two justices shall be collected and levied by the surveyor; who shall within one month after making and confirming the rate collect, levy, and pay to such inhabitant the money so levied as aforesaid. *Id.*

T. 20 G. 3. R. v. *Townsbend*. The parish of *Kingsey* in *Staffordshire*, consists of two districts or townships, viz. *Kingsey* and *Wiston*. An indictment had been preferred against the parish in general for not repairing the highway running through it; to which there was the plea of not guilty, and the parish was convicted, and a fine imposed. This fine was levied on one *Morris*, an inhabitant of the township of *Wiston*; but it was now sworn in the court of king's bench, on the part of the inhabitants of that township, that they had no notice of the indictment, the defence being made only by the other district; and that part of the road which was out of repair lay entirely in that other district. These facts were contradicted (though not very directly) by the affidavits on the other side. *Morris* having applied to the justices in their special sessions, a warrant was there

there made for a rate (to reimburse him) on the inhabitants of the township of *Kingfley*; which rate was made and confirmed by two justices according to the statute: And it having been moved for a mandamus to the surveyor of that township to collect and levy it on the inhabitants thereof, and a rule made to shew cause; now, on shewing cause, in support of the rule, affidavits were produced that the inhabitants of each of the two districts are bound by prescription to repair only such part of the highway as is situate in their respective districts. Against the rule, it was argued that as the indictment and conviction were of the whole parish, the rate was void; for that the justices were only authorized by the act to direct the rate to be made on the parish, township, or place, presented or indicted. If the township of *Wiston* were intitled to the exemption, they ought to have appeared and pleaded specially to the indictment. — *Willes* and *Ashhurst* J. (L. *Mansfield* being absent) were of opinion that they were not so tied down by the words of the statute, but that they might construe it agreeably to the justice of the case: That as it was sworn directly on the part of *Wiston* township (and not expressly denied on the other side) that they had no notice of the indictment, and that the inhabitants of *Kingfley* township alone had taken the defence upon them, it ought to be considered as being substantially an indictment merely against *Kingfley*. — *Buller* J. concurred; but thought the mandamus must be a special writ, suggesting that the part of the highway, which was the subject of the indictment, lay wholly in *Kingfley* township, and that the townships were separately bound to repair their respective parts of the highway, in order to give the inhabitants of *Kingfley* an opportunity to traverse, by the return, either of those facts. To this the two other judges assented. And the rule was made absolute for a mandamus. *Dougl.* 405.

R. v. The J. of *Lancashire*, E. 50 G. 3. An indictment was founded at the *Lancaster* sessions in 1801, against the parish of *Eccles*, for not repairing a road. *Eccles* is divided into five townships, and each township into several hamlets: *Barton* (one of the townships) was divided into 12: each hamlet had immemorially repaired its own highway: the other four townships did not interfere, but *Barton* alone undertook the defence. The parish of *Eccles* were found guilty, and a fine of 400*l.* imposed and levied upon two persons of the parish. Applications were made from time to time on their behalf to the justices for a rate on the parish of *Eccles* to reimburse them, but without effect. In 1808 application was again made for a rate, and in 1809 all the circumstances were laid before the sessions, and they ordered the balance of the money remaining

remaining in hand (148l. 17s. 10d.) to be paid over to these two persons; but the justices refused to make any order for reimbursement as to the rest of the 400l., which had been actually expended. — A mandamus was now moved for to the justices of the county to cause a rate to be made pursuant to the 13 G. 3. c. 78. s. 47. for reimbursing them as to that remainder: This application being eight years after the original preferring of the indictment, it was refused, the interval being so great, and the inhabitants being in a great proportion changed: and *Le Blanc J.* said, those who were obliged to pay the money in the first instance ought to have applied within reasonable time for reimbursement, and not have waited till a great change had taken place in the body of the inhabitants who were to contribute to it. 12 E. R. 366.

Penalties and forfeitures, costs and charges, how to be recovered and applied.

All penalties and forfeitures by this act imposed for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this act, (the manner of levying and recovering whereof is not hereby otherwise particularly directed,) shall be levied by distress and sale, by warrant of some justice, where the offence, neglect, or default shall happen, or such order for payment of such costs or charges shall be made, (d. e. f. g. h.) which warrant such justice shall grant, on conviction of the offender by confession, or the oath of one witness, or upon order made as aforesaid. And the penalty and forfeitures, when levied shall be paid half to the informer, and half to the surveyor for the repair of the highways, unless otherwise directed by this act. But if the surveyor shall be the informer, then the whole shall be employed towards the repair of the highway. And if such distress cannot be found (i) and such penalties and forfeitures or the said costs and charges shall not be forthwith paid, the justice shall commit the offender or person liable to pay the same (k) to the common gaol or house of correction for any time not exceeding three months unless the penalty, forfeiture, costs and charges respectively be sooner paid. 13 G. 3. c. 78. s. 72.

Offender living out of the district.

And if the offender, or person liable, or ordered to pay the same live out of the jurisdiction of the said justice, any justice of the limit where such person shall inhabit, on request to him made, and on a true copy of the conviction and of the order of payment of such costs and charges being produced and proved before him by one witness upon oath, shall by his warrant cause the penalty or forfeiture mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid to be levied by distress and sale; and if no sufficient distress can be had, shall commit him to the common gaol or house

of correction of such limit for the time and in the manner
aforesaid. *Id.*

Provided, that no warrant of distress, unless otherwise
directed by this act, shall be issued for levying any penalty
or forfeiture, costs or charges, until six days after the of-
fender shall have been convicted, and an order made and
served upon him for payment thereof. *f. 73.*

Distress as to
penalties, not to
be made till 6
days after con-
viction.

Provided also, that the prosecutor or informer may at his
election sue for and recover any forfeiture or penalty im-
posed by this act, which shall amount to 40s. or upwards (if
the recovery thereof be not otherwise particularly directed
by this act) either in the manner hereinbefore directed, or
by action of debt in any of his majesty's courts of record,
in which it shall be sufficient to declare that the defendant
is indebted to the plaintiff in the sum of ——— being for-
feited by an act passed in the 13th year of the reign of his
present majesty, intituled, "An act to explain, amend, and
reduce into one act of parliament, the statutes now in being
for the amendment and preservation of the public highways
within that part of *Great Britain* called *England*, and for
other purposes;" and the plaintiff, if he recover, shall have
double costs. *f. 74.*

Penalties above
40s. may be
sued for.

Provided, that there shall be no more than one recovery
for the same offence; and that ten days notice in writing be
given to the party offending previous to the commencement
of such action; and that the same be brought within one
calendar month after the offence committed. *f. 75.*

No conviction shall be had, unless upon confession or oath Witnesses,
of one witness, or view of the justice. *f. 76.*

Any inhabitant, where the offence shall be committed,
may be a witness, notwithstanding his being an inhabitant of
such parish, township, or place. *Id.*

And any justice may administer an oath to any witness or
other person, for the better discovery and execution of the
several matters or things herein directed to be inquired into
and performed. *f. 77.*

Where any distress shall be made for any sum to be levied
by virtue of this act, the distress shall not be deemed un-
lawful, nor the party making the same be deemed a tres-
passer, on account of any default or want of form in the
proceedings; nor shall the party distraining be deemed a
trespasser *ab initio* on account of any irregularity which shall
be afterwards done by the party distraining, but the person
aggrieved by such irregularity may recover full satisfaction
for the special damage in an action on the case. *f. 78.*

Irregularity in
the proceedings.

No person shall recover in any action for any irregularity,
trespass, or wrongful proceedings, if tender of sufficient
amends shall be made before the action brought; and if no
tender

tender hath been made, the defendant by leave may pay into court such sum as he shall see fit, whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court. *f. 79.*

Certiorari.

And no proceedings had in pursuance of this act, shall be quashed for want of form, or removed by *certiorari* or any other process into any of his majesty's courts of record at *Westminster*. *f. 80.*

XIX. Appeal.

If any person shall think himself aggrieved by any thing done by any justice or other person in the execution of this act, and for which no particular method of relief hath been already appointed, he may appeal to any general quarter sessions for the limit where the cause of complaint shall arise, giving notice in writing (1) of his intention to bring such appeal and of the matter thereof to the justice, or other person against whom the complaint shall be made, within six days after the cause of such complaint arose; and within four days after such notice entering into recognizance before a justice within such limit, with one sufficient surety, conditioned to try such appeal at and abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions. 13 G. 3. c. 78. *f. 80.*

[*If any person shall think himself aggrieved*] Under this clause it has been holden that no appeal lies against the allowance of the surveyor's accounts. The 80th section only gives an appeal in cases where there is no other remedy. But in this case relief is provided by the 48th section. The books of accounts, after having been examined by the inhabitants at a vestry, are to be taken to one justice, who may allow such accounts if he please; but if he has any difficulty, he may refer them to the petty sessions, where they are to be examined and allowed; "and when the said accounts shall be so settled and allowed;" that is, either by the single justice, or by the petty sessions, they are to be kept for the use of the parish. This mode of allowing the accounts was prescribed for the purpose of preventing any appeal to the quarter sessions. It is immaterial whether the accounts are first taken to one magistrate, and afterwards to the petty sessions; or whether they are taken at once to the petty sessions. In neither case does an appeal lie to the quarter sessions. *R. v. the justices of the West Riding of Yorkshire.* 5 T. R. 629. and *R. v. W. Mitchell.* *Id.* 701.

And such justice and other person, having received such notice, shall return all proceedings had before them, touch-
ing

ing the matter of such appeal, to the said general quarter sessions; on pain of 5l. 13 G. 3. c. 78. s. 80.

The justices at such sessions, on proof of such notice given, and of the entering into such recognizance, shall hear and finally determine such appeal in a summary way, and award such costs to the party appealing or appealed against as they shall think proper. *Ib.* See *Turnpike. Costs.*

Provided, that no appeal shall be made against any conviction for a penalty or forfeiture, unless the person convicted shall at the time of such conviction if he be then present, if not within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty or forfeiture, in case the conviction be affirmed upon the appeal: And on his giving such security, the further proceeding for such penalty or forfeiture shall be suspended until the appeal be heard and determined. 13 G. 3. c. 78. s. 80.

XX. *Limitation of actions.*

If any action shall be commenced for any thing done in the execution of this act, the same shall be brought within three months, and within the county where the fact was committed, and the defendant may plead the general issue; and if he prevails in the action, he shall have treble costs. 13 G. 3. c. 78. s. 81.

The following case was reported after this title had been put to press; but it is thought an important case, and is therefore inserted in this place.

R. v. Inhabitants of St. George, Hanover Square. This was an indictment for not repairing the pavement of *Piccadilly*, from *Hyde Park Corner* to *Bond Street*. Plea, *Not Guilty*.

Evidence was given, that the street in question is in the parish of *St. George, Hanover Square*, and that the whole of it was out of repair at the time mentioned in the indictment.

The counsel for the defendants undertook to prove, that so much of *Piccadilly* as lies between *Bond Street* and *Clarges Street* was, during that time, in good repair, and that the parish was not answerable for the residue. Stat. 6 Geo. 3. c. 54. which appoints commissioners for paving and lighting the city and liberty of *Westminster*, enacts, "That the roads leading from the end of *Clarges Street* to the turnpike gate near *Hyde Park Corner*, shall be under the care, management,

"ment, and direction of the said commissioners, and that
 "to enable them to pave and keep in repair the said roads,
 "the trustees for repairing the roads in the parishes of
 "*Kensington, Chelsea, and Fulham*, shall pay yearly to the
 "said commissioners the sum of 1000*l.* which shall be ap-
 "plied by them in paving, cleansing, and repairing the said
 "roads, leading from the end of *Clarges Street* to the turn-
 "pike gate near *Hyde Park Corner*." And stat. 29 *Geo.* 3.
c. 75. for paving, cleansing, and lighting the streets and
 squares, &c. in the parish of *St. George Hanover Square*,
 contains a provision, that none of the powers contained in
 that act shall extend to such part of *Piccadilly* as lies between
Clarges Street and *Hyde Park Corner*. Both these are de-
 clared to be public acts. — The effect of them, the Counsel
 for the defendants argued, was, entirely to exempt the parish
 from the repair of that part of *Piccadilly* lying between
Clarges Street and *Hyde Park Corner*, the repairing of it
 being placed under the care of the commissioners of pave-
 ment, a fund being provided for the purpose, and the legis-
 lature having expressly declared, that the act for repairing
 the other streets in the parish should not extend to this part
 of the street in question. The parish had no fund to repair
 it, and would be trespassing if they were to interfere
 with it.

On the other side, they denied the exemption, and con-
 tended, that at any rate, this was no defence under the
 general issue.

Lord *Ellenborough*. — If these acts of parliament did
 exempt the parish from the repair of the highway in question,
 I think this would be a sufficient defence upon the plea of
Not Guilty. In general, when a parish denies its liability to
 repair a highway, a special plea is necessary, stating who are
 liable; but I do not think this rule applies when the burthen
 of repairing is transferred from the inhabitants of the parish
 by a public act of parliament, to which all are supposed to
 be privy, and of which all are supposed to have cognizance.
 — I am of opinion, however, that these acts are no answer
 to this indictment. They certainly do not expressly exempt
 the parish from the common law liability to repair all high-
 ways within its limits. Do they create any exemption by
 implication? I think not. The duty of repairing may be
 imposed upon others, although the parish be still liable.
 The parish must, in the first instance, see that the street is
 properly paved, and seek a remedy over against the com-
 missioners. The 1000*l.* a year is an auxiliary fund; but
 will not prevent other means being resorted to, which would
 have been available had the acts relied upon never passed.

Guilty. 3 *Campb.* 222.

Highways, turnpike.**II. Concerning turnpike roads in particular.****Sect. I. General qualification of trustees.**

[13 G. 3. c. 84. f. 44.]

II. Officers in general.

[f. 45, 46. 54—57. 65. 73.]

III. Meetings.

[f. 49, 50. — 25 G. 3. c. 82. f. 7.]

IV. Payment of subscriptions enforced.

[13 G. 3. c. 84. f. 35.]

V. Stamp duties with respect to turnpike roads.

[23 G. 3. c. 58. f. 15.]

VI. Weighing engines to be erected, with additional toll for over-weight.

[13 G. 3. c. 84. f. 1—8. 66. — 14 G. 3. c. 82. — 18 G. 3. c. 63. f. 2.]

VII. Breadth and tire of wheels.

[13 G. 3. c. 84. f. 9. 22, 23—27. 60. — 14 G. 3. c. 82. — 16 G. 3. c. 39. — 18 G. 3. c. 28.]

VIII. Number of horses or beasts of draught.

[13 G. 3. c. 84. f. 13. 15. 18—21. 59. 67.]

IX. Toll for cattle going to or from water or pasture, for manure, and for other things.

[17 G. 3. c. 16. — 52 G. 3. c. 145. — 53 G. 3. c. 82.]

X. Carriages to be marked.

[13 G. 3. c. 84. f. 21. 68.]

XI. Driver misbehaving.

[f. 40.]

XII. Power of the general highway acts transferred to turnpike roads.

[f. 70.]

XIII. Statute duty and other labour on turnpike roads.

[f. 32, 33. 58. 61—63. 71.]

XIV. Annoyances to be removed.

[f. 37, 38. 47.]

XV. Side gates.

[f. 34. — 14 G. 3. c. 57.]

XVI. *Farming the tolls.*

[f. 31.]

XVII. *Mortgagee to account.*

[f. 52, 53.]

XVIII. *Power of lessening the tolls.*

[f. 29, 30.]

XIX. *Demolishing gates, and doing other damage.*

[f. 39, 40—43. 51.]

XX. *Of tolls, and the penalty of evading the tolls, or obstructing the execution hereof.*

[f. 10, 11. 17. 28. 75.]

XXI. *Lewying and application of forfeitures.*

[f. 48. 74. 76—82.]

XXII. *Appeal.*

[4 An. c. 16. f. 4, 5. — 13 G. 3. c. 84. f. 82, 83.]

XXIII. *Limitation of actions.*

[ALTHOUGH the following case does not strictly come within any of the above sections, but arises upon the construction of a clause in a private turnpike act, yet, as it is of general importance in principle, it is thought fit to insert it in this place.]

Williams v. Sangar, T. 48 G. 3. Trespass was brought for taking a horse and coach of the plaintiff, and detaining them till he had paid 1s. 6d. for their release. Upon not guilty pleaded, a case was reserved.—The plaintiff was proprietor of a common stage coach, travelling with four horses from *Bristol* to *Gloucester*, and back again. The passengers paid a certain fixed sum for the journey, which included every expence of the coach, except for extra luggage, and the coachman's gratuity; all turnpikes being defrayed by the proprietors. The case then stated that the coach, with four persons in it, going from *B.* to *G.* passed through the turnpike, and that the proper toll of 1s. 6d. (under the 19 G. 3. c. 117. & 37 G. 3.) was paid; that the coach returned on the same day with different passengers and horses; that another 1s. 6d. was demanded, and refused, and that the coach and horses were detained till the 1s. 6d. was paid.

The question was, whether the plaintiff were liable, under the act, to pay the 1s. 6d. as last mentioned. The clauses are, in substance, to be found in almost all turnpike acts; and are as follow.—By one clause the toll is imposed, as usual, on such and such carriages, drawn by so many horses, and so much on every horse, &c.—By another clause, "No person shall be subject to the payment of toll

" more

“ more than once in any one day for passing and repassing
 “ with the same horse, &c. or carriage, through the same
 “ turnpike; nor shall any person be subject to the payment
 “ of toll for the passage of any horse, &c. or carriage in the
 “ same day, through more than one turnpike, on the several
 “ roads specified.”—By another clause, “ No person
 “ who shall have paid the toll for the passage of any horse,
 “ &c. or carriage, through any turnpike gate (on certain
 “ roads), shall be subject to the payment of any toll in the
 “ same day, for the passage of the same horse, &c. or carriage,
 “ through any other turnpike gate” (on certain other roads). Then by the clause in question, “ in all
 “ cases of carriages travelling for hire, the traveller or passenger,
 “ traveller or passengers, conveyed therein, shall be considered
 “ as the person or persons paying the toll, and such payment shall
 “ not exempt such carriages repassing with a different traveller,
 “ &c.; — but he or they shall be liable to pay the toll as if
 “ the carriage had not before passed that day.”—Lord *Ellenborough* C. J., after
 “ advert- ing to the clauses in question, that the words, “ a carriage
 “ travelling for hire,” inserted in the last clause, only applied
 “ to post-chaifes and other carriages which are frequently hired
 “ to pass and repass on the same road with different travellers,
 “ on the same day, and where the respective travellers may properly
 “ be said to have hired the carriage each in his turn. In these
 “ cases the payment of the toll by one traveller hiring the carriage
 “ was meant not to exempt any other traveller who happens to
 “ hire the same carriage on the same day. And he said that this
 “ expression (travelling for hire) used in 28 G. 3. c. 57. merely
 “ was used to distinguish between carriages of a public nature and
 “ those used for public purposes, and carriages used for private
 “ purposes. That here we must look to the distinction between
 “ what strictly speaking is a traveller hiring a carriage, and
 “ one who only hires a place in a carriage, but who cannot be
 “ said to hire the carriage itself. That it was a distinction well
 “ understood, and where the travellers do not hire the carriage
 “ itself, but only their respective places, it is not within the
 “ meaning of the clause. — *Grose* J. agreed, as did also *Le Blanc*
 “ J. That this was not within the clause, and words “ travelling
 “ for hire;” and that the passengers in a stage coach hire
 “ only their places, and not the coach. That whether the return
 “ were with the same, or different horses, made no difference;
 “ the toll being imposed upon the carriage, and not upon the
 “ horses. — *Bayley* J. agreed. *Postea* to the plaintiff. 10 E. R. 66.

I. General qualification of trustees.

In many of the acts for repairing turnpike roads, there is a clause ascertaining the quantity of estate which a man shall be possessed of, in order to entitle him to act as a trustee in the execution of such act. And by the 13 G. 3. c. 84. where no such qualification is directed by any such particular act, it is generally provided that in such case, no person shall be capable of acting as a trustee in the execution of any such act unless he shall be in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 40l., or possessed of or entitled to a personal estate to the value of 800l.; or heir apparent of a person possessed of an estate in land of the clear yearly value of 80l.; and unless, before he acts (not being such heir apparent), he take and subscribe the following oath before two trustees: "*I A. B. do swear, that I truly and bonâ fide am in my own right [or, in the right of my wife] in the actual possession and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of forty pounds; [or, possessed of, or entitled to, a personal estate of the value of eight hundred pounds, as the case may be.] So help me God.*" And if he shall act contrary thereto, he shall forfeit 50l. to him who shall sue: And the proof of the qualification shall lie on the person prosecuted. *f. 44.*

II. Officers in general.

Officers not to be alehouse keepers.

No person keeping a victualling house, alehouse, or other house of public entertainment, or who shall sell any wine, cyder, beer, ale, spirituous or other strong liquors by retail, shall be capable of acting as trustee, or of holding any place of trust or profit under the trustees, or of collecting the toll: but no such person shall be precluded from farming such tolls, provided he employs a person to collect them who shall not be under such incapacity. 13 G. 3. c. 84. *f. 46.*

Treasurer and surveyor to give bond.

Every treasurer and surveyor shall, within one month after his appointment, give bond (without stamp) to the trustees, with a sufficient surety, in such penalty as the trustees at a public meeting shall direct, duly to pay and account for all such money which shall be then in his hands, or which he shall afterwards receive as treasurer or surveyor. *f. 65.*

If any surveyor shall have any share or interest, directly or indirectly, in any contract for getting or carrying away any material, or for work on account of any of the highways, roads, or bridges under his care, or shall so let to hire any team, or dispose of any materials to be used thereon, unless a license in writing be first obtained from the trustee, he shall forfeit 10*l.*, and be for ever incapable of being employed as a surveyor under this or any other act of parliament. *f.* 36.

No gatekeeper, or person renting the tolls, and residing in the toll-house, shall be removable by any order of two justices as to his settlement, unless he shall be actually chargeable; nor shall he gain a settlement by such renting and residence in the parish or place where the toll-house is situate. And no tolls or toll-house shall be assessed towards the poor rate, or any other public or parochial levy. *f.* 56.

Gatekeeper not removable till chargeable, nor toll-houses rate-able to the poor.

If any gatekeeper shall suffer any waggon, wain, cart, or other carriage to pass through the gate, or bar, or to be drawn or pass within his view or with his knowledge, with any greater number of horses or beasts of draught, or with any carriage constructed or drawn in any other manner, or without such names and descriptions painted thereon, as are in this act directed, and shall not within one week proceed for the recovery of the forfeitures, he shall forfeit 4*s.* *f.* 57.

Gatekeepers to give an account of misde-meanors.

The gatekeeper, and also the surveyor, shall when required by notice in writing from the trustees, or any five of them, render upon oath, to be administered by and taken before any justice or a trustee, an account in writing to the trustees, or a person to be named in such notice, appointed by them, or any five of them, of all money received by them on account of the road, and not before accounted for; on pain of 5*l.* to be recovered in a summary manner before one justice, and applied to the use of the road. *f.* 55.

Gatekeepers and surveyors to give an account of money received by them.

Upon the death of a gatekeeper, two trustees may appoint another till the next meeting. *f.* 54.

Gatekeeper dying.

And if the wife or family of a gatekeeper who shall die shall refuse to deliver up possession within four days after another shall be appointed: or if a gatekeeper shall be discharged from his office, and shall refuse to deliver up possession within two days after notice given to him of his discharge; one justice may by his warrant order the constable, with such assistance as shall be necessary, to enter the house and premises in the day-time, and remove the persons who shall be found therein, together with their goods, out of such house, and put the new appointed officer in possession. *f.* 54.

Officers to account.

All clerks, treasurers, surveyors, and other officers, and their respective executors and administrators, shall within ten days after notice in writing given to them by the trustees, or five of them at a meeting, produce and deliver up all books, accounts, papers, or writings relative to the execution of their offices; on pain of 20*l.* *s.* 45.

General penalty on officers not doing their duty.

Every constable refusing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty, and every surveyor, toll-taker, and all persons employed by the trustees, who receive salaries or rewards, that shall wilfully neglect, for the space of one week after an offence committed, to lay such information on oath before a justice as by this act is directed; shall forfeit 10*l.* *s.* 73.

III. Meetings.

Meetings how to be sustained.

By the 13 G. 3. c. 84. Where a sufficient number of trustees shall not meet on the day appointed for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, it shall be lawful for the major part of such of them as do meet, or if none shall be present the clerk shall cause ten days' notice in writing to be affixed on all the toll gates erected on the said road, or if none shall be then erected, in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie (and also in some public newspaper circulated in that country), appointing the trustees to meet at such place where the preceding meeting was appointed to have been held: or at the place appointed for the first meeting, if no such preceding meeting shall have been held. *s.* 49.

And by the 18 G. 3. c. 63. Where the trustees shall not meet on the day appointed for their first meeting, or on any day appointed by adjournment, or shall not adjourn, or when the day appointed for the first meeting hath elapsed before the passing of the act, any five or more of them may cause notice under their hands to be affixed on all the turnpike gates on the said road, or if none shall be then erected, they may cause the like notice to be affixed in some conspicuous place in one of the market towns near the road, and also to be published in some newspaper circulated in that part of the country, at least twenty days before appointing the trustees to meet at the place where the last preceding meeting was appointed to have been held, or at the place directed for the first meeting, if no preceding meeting hath been held. *s.* 1.

No meeting shall be adjourned for longer time than three calendar months. 13 G. 3. c. 84. s. 50.

No business shall be proceeded on at a meeting before the hour of ten in the forenoon; and no adjournment shall be made to any hour later than two in the afternoon of the day on which such meeting shall be appointed to be held. *Id.*

Hours of business.

Whereas some persons may have acted as trustees in the execution of certain turnpike acts without having been regularly appointed, and doubts may arise whether the proceedings of the trustees had at any meetings where such persons have acted are strictly legal, for obviating whereof it is enacted, that all proceedings of trustees for any turnpike road, at meetings where any such persons have acted, shall be as good, valid, and effectual in the law, as if such person had been duly appointed; and that no such person shall be liable to be prosecuted for having so acted, provided that at the time he so acted as a trustee he had an estate sufficient to qualify him, and had also taken the path required by persons acting as trustees. 25 G. 3. c. 82. s. 7.

Proceedings are valid although the trustees may not have been regularly appointed.

And every act agreed upon at any meeting shall be signed at the said meeting by a competent number of trustees; otherwise the meeting, adjournment, and act shall be void. 13 G. 3. c. 84. s. 50.

Orders to be signed.

IV. *Payment of subscriptions enforced.*

If any person shall agree to advance any sum for making or repairing any turnpike road, or highway intended to be made turnpike, and shall subscribe his name to any writing for that purpose, he shall be liable to pay the same accordingly; and in default of payment within 21 days after the same shall have become payable according to the purport of such writing, and shall be demanded by the person to whom the same is made payable by such writing, or if no person be named therein then by the treasurer of the turnpike, or intended turnpike, such treasurer or other person may sue for and receive the same. 13 G. 3. c. 84. s. 35.

V. *Stamp duties with respect to turnpike roads.*

By 23 G. 3. c. 58. it is enacted, that all such parts of any act of parliament, relative to any turnpike, road, &c. passed before Dec. 5. 1782, as exempt any mortgage, assignment, transfer, or other security for borrowing money, or any nomination, contract, bond, warrant, judgment, or

other writing liable to stamped duties, from being stamped, shall be and are repealed. *f. 15.*

VI. Weighing engines to be erected, with additional toll for over-weight.

Weighing engines to be erected.

The trustees or five of them at some public meeting may, if they think proper, at any toll-gates, or in any part of the road, and at such a distance from any turnpike gate or bar as they shall think proper, cause a crane, machine, or engine to be erected, for the weighing of carts, waggons, or carriages conveying any goods or merchandize whatsoever; and by writing signed by them, or any five of them, may cause such carriage which shall pass loaded through such gate or bar to be weighed, together with the loading thereof. (m) 13.G. 3. c. 84. *f. 1.*

Additional toll for over-weight.

And may take, over and above the other tolls, an additional toll for every cwt. of 112lb. to the hundred, which every such carriage with the loading thereof shall weigh over and above the weights hereby allowed to each of them respectively, viz.

To every waggon or four-wheel carriage, having the fellies or rollers of the wheels of the breadth of 16 inches, eight tons in summer, and seven in winter;

To every waggon or wain having the axle trees thereof of such different lengths, that the distance from wheel to wheel of the nearer pair of the said wheels be not more than four feet two inches, to be measured at the ground, and that the distance from wheel to wheel of the other pair thereof be such, that the fore and hind wheels shall roll only one single surface or path of 16 inches wide at the least, on each side of the said waggons or wains, and having the fellies thereof of the breadth of nine inches from side to side at the bottom; six tons ten hundred in summer, and six tons in winter;

To every waggon or four-wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of nine inches; six tons in summer, and five tons ten hundred in winter;

To every cart having the fellies of nine inches, three tons in summer, and two tons fifteen hundred in winter;

To every waggon having the sole or bottom of the fellies of the wheels of the breadth of six inches; four tons five hundred in summer, and three tons fifteen hundred in winter;

To every such waggon so constructed as to roll a surface of eleven inches; five tons ten hundred in summer, and five tons in winter;

To every cart having the fellies of the wheels of the same dimensions; two tons twelve hundred in summer, and two tons seven hundred in winter;

To every waggon having the sole or bottom of the fellies of the wheels of less breadth than six inches, three tons ten hundred in summer, and three tons in winter;

And to every cart having the fellies of the wheels of the same dimensions; one ton ten hundred in summer, and one ton seven hundred in winter;

And for the several purposes aforesaid, it shall be deemed summer from *May 1. to Oct. 31.* both inclusive; and winter from *Nov. 1. to April 30.* both inclusive. 13 G. 3. c. 84. s. 1.

Which said additional toll shall be as follows; *viz.*

For the first and second hundred of such over-weight, the sum of 3d. for each hundred;

For every hundred above two hundred, and not exceeding five hundred, the sum of 6d.;

For every hundred above five hundred weight, and not exceeding ten hundred, the sum of 2s. 6d.;

For every hundred above ten hundred weight, and not exceeding fifteen hundred, the sum of 5s.;

For every hundred above fifteen hundred, the sum of 20s.;

Provided, that the trustees of the several turnpike roads within ten miles of *London, Westminster, and Southwark,* may lower these additional tolls as they shall think fit. 14 G. 3. c. 82.

The toll-gate keeper, or other person appointed to the care of the weighing engine, shall weigh all such waggons and carts as he shall have reason to believe carry greater weights than are allowed to pass without paying the additional toll. And if he shall permit such waggon or cart to pass through any such toll-gate with greater weights than are hereby allowed, without weighing the same and receiving the additional tolls, he shall forfeit 5l. 13 G. 3. c. 84. s. 2.

And in order to detect any connivance or breach of duty in the person so appointed to weigh the carriages, any trustee, creditor, clerk, treasurer, or surveyor of such turnpike road, may cause any carriage which shall have passed through the gate where such weighing machine shall have been erected, and shall not have gone above 300 yards beyond such gate, to return and be weighed, upon requiring the driver to drive back, and paying to the driver the sum of 1s.; which sum shall be returned by the driver, if the carriage and loading be above the weight hereby allowed. s. 3.

Toll-taker to weigh.

If the driver refuse to return, he shall forfeit 40s.; and any other person, being then present, may upon such neglect and refusal drive back such carriage in order to be weighed.

f. 4.

The surveyors shall make convenient places for turning such carriages within 300 yards of the gate on each side thereof, if the ground will admit of it. *Id.*

List of names to be put up at the weighing engine.

And there shall be a list of the names of all the trustees and creditors, and also of the clerk, treasurer, and surveyor of such turnpike road, put up in the house or building where such weighing engine shall be placed, to be inspected by the owner or driver of every such carriage. *f. 4.*

Exemptions from weighing.

Provided, that the aforesaid regulations of weight shall not extend to any waggon, cart, or carriage, employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthrashed. 13 G. 3. c. 84. *f. 6.* And by 14 G. 3. c. 82. no waggon, cart, or carriage, employed only in husbandry, or carrying only manure or lime for the improvement of land, or hay, straw, fodder, or corn unthrashed, (excepting hay or corn carried for sale) shall be weighed at any weighing machine.

By the 18 G. 3. c. 63. No toll or duty shall be taken by virtue of any act for repairing any public road for any horses belonging to officers or soldiers upon their march or upon duty, or for any horses, cattle, or carriages employed in carrying the arms or baggage of any such officers or soldiers, or carrying any sick, wounded, or disabled officers or soldiers; and no carriages so employed shall be subject to be weighed at any engine erected upon any turnpike road, nor the owner or driver liable to any forfeiture for overweight. *f. 2.*

The sessions may cause engines to be erected.

And the justices in sessions, on complaint to them made, by any justice or any two creditors or trustees, that such turnpike road is much damaged by excessive weights being carried thereon, and that no weighing engine hath been or ordered to be erected, may summon the clerk, surveyor, and treasurer, to appear before them at the then next general quarter sessions, to shew cause why a weighing engine should not be erected at or near such gates, upon such turnpike roads as shall be described in the summons: and if at such subsequent sessions, the said clerk, &c. or one of them shall not appear, or appearing shall not shew sufficient cause against the same, the said justices may order such engines to be erected as they shall think fit, a copy of which order shall be forthwith delivered to the clerk of the road, and the trustees shall at their meeting next after such delivery, contract with some person for the erecting such engines.

engines, and pay the expences thereof out of the tolls.

13 G. 3. c. 84. §. 7.

Where two or more roads meet at or near the same place, the trustees of such roads respectively, at a meeting for that purpose, may fix upon some convenient place to erect a weighing engine upon, which will accommodate all such roads, and may proportion the expences, and the money arising from forfeitures for over-weight amongst such roads, in such manner as they shall judge reasonable. §. 8.

Engine where
two roads meet.

The trustees shall cause to be put up and continued upon every toll-gate a table of all the tolls payable at every such gate, distinguishing each toll, and the different sorts of carriages for which they are to be paid; and also a table of the weights allowed for each carriage, with the loading thereof in summer and winter. §. 66.

Table of the
tolls to be put
up at the gate.

VII. *Breadth and tire of wheels.*

Whereas by several acts of parliament for particular turnpike roads, several high tolls are granted for waggons, carts, and other carriages, drawn by more than a certain number of horses or beasts of draught, with intent in effect to prohibit the passage of such carriages, and thereby the better to preserve the roads, it is enacted, that the trustees of such road, or any five of them, at the first meeting after the commencement of this act, shall mitigate and reduce the same high tolls, in respect of such waggons or other wheel carriages only, having the wheels of the breadth of six inches, in such manner as no greater toll in respect to *waggons*, be taken for the same than is directed by the said acts respectively to be taken for waggons and other four wheeled carriages drawn by four horses or beasts of draught; and that no greater toll be taken for *carts* having the fellies of their wheels of the breadth of six inches than is directed by such acts to be taken for carts drawn by three horses.

Diminution of
tolls in respect
of broad wheels.

13 G. 3. c. 84. §. 22.

The turnpike trustees, or persons authorized by them, shall take for every waggon, wain, cart, or carriage having the fellies of the wheels of less breadth than six inches from side to side, at the bottom or sole thereof, and for the horses or beasts of draught drawing the same one half more than the tolls payable for the same respectively. §. 23. and 18 G. 3. c. 28.

Increase of toll
in respect of
narrow wheels.

And whereas there are in several turnpike acts exemptions allowed from payment of tolls in particular cases, and liberties allowed in particular cases, to pay less than are charged upon other waggons, carts, or carriages passing through turnpike gates; and whereas it will tend to the ad-

vantage

vantage and preservation of turnpike roads, to confine such exemptions and liberties to carriages with wheels of the breadth of six inches or upwards; it is enacted, that no person shall, by virtue of the said acts, have any benefit or advantage of any exemption from toll or part of toll, or to pay less in respect of any waggon, wain, cart, or other carriage, or horse drawing the same, and carrying any particular kind of goods, than other carriages of the like nature, carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage have the sole of the bottom of the fellies of the wheels of the breadth of six inches or upwards; except carts and carriages carrying corn or grain in the straw, hay, straw, fodder, dung, lime for the improvement of land, or other manure, or any implements of husbandry only. *f. 24.*

Exemptions in
respect of flat
wheels.

Provided, that no person shall have the benefit of any such exemption, or any privilege of compounding for tolls, in respect of any carriage having the fellies of the wheels of the breadth of six inches or upwards, unless the fellies and the tire upon such fellies shall lie so flat, as not to deviate more than one inch from a flat surface. *13 G. 3. c. 84. f. 9. 25. 16 G. 3. c. 39.*

Provided also, that all waggons, carts, or carriages moving upon rollers, of the breadth of 16 inches on each side thereof with flat surfaces, shall pass on any turnpike road toll free (for five years from *Michaelmas 1774*, *14 G. 3. c. 82.*) and afterwards, paying only so much toll as shall not exceed half of the full toll payable for carriages having the fellies of the wheels of the breadth of six inches from side to side, and not rolling a surface of 16 inches on each side thereof; and that no more than half toll shall be paid in respect of waggons having the fellies of the wheels of the breadth of nine inches, and rolling a surface of 16 inches on each side thereof, from and after the commencement of this act. *f. 26.*

General excep-
tions.

Provided always, that nothing herein contained shall extend to any chaise marine, coach, landau, berlin, chariot, chaise, chair, calash, or hearse; or to the carriage of such ammunition or artillery as shall be for his majesty's service; or to any cart or carriage drawn by one horse or two oxen and no more; or to any carriage having the sole or bottom of the fellies of the wheels of the breadth of nine inches, which shall be laden with one block or stone, one piece of marble, one cable rope, one piece of metal, or one piece of timber. *13 G. 3. c. 84. f. 27.*

And no toll shall be paid at any turnpike gate, in respect of carriages solely employed in carrying materials for the repair of any turnpike road or public highway, or for going to or returning from such employment. *f. 60.*

VIII. *Number of horses or beasts of draught.*

No waggon or other four-wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of nine inches, shall pass on any turnpike road with more than eight horses; nor any cart or other two-wheeled carriage, having wheels of the breadth aforesaid, shall pass with more than five horses: And the horses in such respective carriages shall draw in pairs (except an odd horse in any team, and except where the number of horses shall not exceed four);

Number of horses.

And no waggon or other four-wheeled carriage, having the sole or bottom of the fellies of the wheels of the breadth of six inches, shall pass on any turnpike road with more than six horses; nor any cart or other two-wheeled carriage, having wheels of the like breadth shall pass with more than four horses;

And no waggon or other four wheeled carriage having the fellies of the wheels of less breadth than six inches shall pass on any turnpike road with more than four horses; nor any cart or other two-wheeled carriage, having the fellies of the wheels of less breadth than six inches, shall pass on any turnpike road with more than three horses;

On pain that the owner of every such carriage shall forfeit 5*l.*, and the driver (not being the owner) 20*s.* to any person who shall sue for the same. 13 G. 3. c. 84. *f.* 13. [see *Robinson v. Pocock*, *infra*.]

And in all carriages for all the purposes of this act two oxen or neat cattle shall be considered as one horse. *f.* 67.

Provided, that no prosecution shall be commenced before a justice by way of information, for any forfeiture incurred by the owner or driver of any carriage having a greater number of horses therein than are allowed by this act, unless such information be laid within three days after the offence committed; and that no *action* shall be commenced, unless within one calendar month after the offence committed: and that neither such information nor action shall be brought unless notice be given by the informer to the driver on the day on which the offence shall be committed, of an intention to complain of such offence. And if it shall appear to the justice before whom such complaint shall be made that the offender lives so remote as to make it convenient to summon him; the justice may dismiss the complaint, and leave the informer to his remedy by action at law. *f.* 15.

If it shall appear to the trustees of any turnpike road, or any seven of them at a public meeting, by the oath of one witness experienced in levelling, that any part of the rise of any hill upon such road shall be more than four inches in a yard;

Exception of drawing up steep hills.

yard; they may allow (n) such number of horses as the shall judge necessary, not exceeding 10 for waggons with nine-inch wheels, nor six for carts with nine-inch wheels, and not exceeding seven for waggons with six-inch wheels, nor five for carts with six-inch wheels, and not exceeding five for waggons with wheels of less breadth than six inches, nor four for carts with wheels of less breadth than six inches.

And in case it shall appear that the whole rise of any hill taken together shall be more than four inches in a yard upon an average, they may allow such number of horses as the shall think fit, for the purpose only of drawing up such hill, the length and extent of such hill to be specified in such order of allowance, and the termination at each end thereof to be marked by a post or stone to be erected at such respective boundaries; and the said order of allowance to be certified by the trustees or their clerk (o) to the next sessions who on proof upon oath may confirm and file or vacate and quash the same, and the justices at any subsequent session may reconsider and discharge the same if they think fit *f. 18.*

Exception of
ice or snow.

And if it shall appear upon the oath of credible witnesses to the satisfaction of any justice or court authorized to enforce the execution of this act that any carriage could not by reason of deep snow or ice, be drawn with the respective weights, and by the number of horses or beasts of draught hereby allowed, *they may stop all proceedings before them* for the recovery of any penalty or forfeiture for drawing with a greater number of horses or beasts of draught than is hereby allowed. *f. 19.*

Robinson v. Pocock, M. 50 G. 3. In this case which was an action of debt for the penalty under *f. 13.* and in which evidence was offered by the defendant as to the state of the road from the effects of the snow and frost, shewing that the using more than the regular number of horses, was owing to the snow and frost rendering the draft too great for the regular number, *Thompson, Baron*, was of opinion that *f. 19.* as to a stay of proceedings did not apply to a court of *Nisi Prius*, but the court out of which the record came; and he rejected the evidence, the plaintiff had a verdict, and afterwards it was held that a justice at *Nisi Prius* cannot under *f. 19.* stay the proceedings in the cause; that his function at *Nisi Prius* is merely to try the issue joined; and by the terms of the 19th section, the only application to be made is for a stay of proceedings. — *Grose J.* said, that by the words *the court*, was meant, the court which originates the proceedings. — *Le Blanc J.* From the terms made use of in this clause it could never be meant that the fact of the

excuse

excuse allowed should be set up as a defence at the trial, but upon summary application in the first instance to the court above. — *Bayley J.* said, I am not satisfied that if the fact appeared doubtful to the court upon contradictory affidavits, the defendant might not, if he had applied for it, have obtained an issue to try the fact : but no such application was made ; and the stay of proceedings must be by the court above. *11 East's Rep.* 484.

[*Note.* This was said in allusion to an application which had been made upon unsatisfactory affidavits after the commencement of the action, to the court, to stay proceedings, and which had been rejected.]

Whereas great damage is done to turnpike roads by waggons and other carriages with narrow wheels drawn by horses in pairs, it shall not be lawful for any waggon, wain, or cart, having the sole or bottom of the fellies of the wheels thereof of less breadth than nine inches, to pass upon any turnpike road, if the same shall be drawn by horses in pairs ; except such, having the fellies of the breadth of six inches, as shall be authorized to be drawn in any other manner by order of the trustees at a public meeting, consisting of seven or more ; and except carriages drawn by two horses only. *f. 20.*

Narrow-wheeled carriages not to be drawn by horses in pairs.

And if any person shall, upon any turnpike road, drive with more than the number of horses hereby allowed, the constable, surveyor, or any other person may apprehend and carry him before a justice, and upon conviction by confession or oath of one witness he shall forfeit not exceeding 5*l.* nor less than 10*s.* *f. 21.*

Apprehending offenders.

The justices in *Wales*, at their *Michaelmas* quarter sessions yearly, may license an increase of the number of horses in drawing carriages on any turnpike road, over and above the number herein before limited, if upon inquiry they find an additional number necessary ; and may from time to time, at any *Michaelmas* sessions, alter, vary, or revoke the same as they shall think fit. *f. 59.*

Exception as to *Wales*.

IX. Toll for cattle going to or from water or pasture.

By the 17 G. 3. c. 16. Whereas an exemption from toll by several particular turnpike acts hath been granted for cattle going to and from water and pasture, and many disputes have arisen how far that exemption extended, it is enacted, that in all cases where any exemption from toll for cattle going to and from water or pasture is or shall be given by any turnpike act, such exemption shall only extend to such cattle as shall be driven to and from water or pasture from one parish to the next adjoining parish, or to such cattle as shall

shall

shall not pass upon any such turnpike road more than for the space of two miles in going to or returning from water or pasture.

Going to or from water or pasture] T. 36 G. 3. *Harrison v. Brough*. This was an action of trespass for taking the plaintiff's horse for refusing to pay toll under the act of 16 G. 3. *for repairing the highways leading to Highgate gatehouse, &c.* By one section of that act a toll of 1d. is imposed on every horse, with an exception, similar to that in the stat. 17 G. 3. c. 16. "of cattle going to or returning from pasture in the said parishes, &c." By another section, in order to defray the expences of lighting and watching the road, another toll of one halfpenny is imposed "on every horse, except the horse ridden by the driver of any carriage used for husbandry, &c., or horse returning from pasture, or attending cattle for that purpose." The plaintiff was a farmer residing in one of the parishes; part of his farm lying on one side and part on the other side of the turnpike. His servant was going on one of his horses, bridled and saddled, to a part of the farm to fetch two of the cows from pasture, in doing which he was obliged to go a few yards through the turnpike. In passing the turnpike he refused to pay either of the tolls of a penny or a halfpenny, for both of which the defendant, who was the toll-gate keeper, seized the horse as distress. At the trial a special case was reserved. It was contended that the plaintiff was not liable to pay either of the tolls. That the exemptions were introduced into the act for the benefit of husbandry; and that it would be almost ridiculous to say, that the horse should be exempted *when returning with the cattle*, but should yet be liable to the toll *when going to fetch the cattle from pasture*. — But by L. Kenyon Ch. J. The question is, Whether a horse going to fetch cattle was attending the cattle at the time? barely stating the question is answering it. When the horse is attending the cattle, the turnpike-man can see what is passing, and of course can judge when the party is entitled to the benefit of the exemption; but he has no means of knowing whether the horse is going to fetch cattle. If this were allowed to be an exemption, it would open a great door to fraud on the turnpike men. I am therefore of opinion that the plaintiff is liable to the tolls, neither within the words nor the spirit of either of the exemptions. 6 T. R. 706.

By the 52 G. 3. c. 145. reciting that whereas an exemption from toll has, by several acts for repairing turnpike roads, been granted, in respect of cattle or carriages carrying or drawing any dung, manure, or compost for manuring the land, or fodder for cattle: And whereas in some of the said acts there is no express provision made for any exemption from

from

from the payment of toll for and in respect of any carriage, or the cattle drawing the same, going empty for such lading, or returning empty, having been so laden; and, by reason of such omission, toll has in some cases been lately demanded, and received, in respect of carriages going empty for such lading; and in other cases disputes have arisen concerning the same: And whereas by a clause in the 13 G. 3. c. 78. it is enacted, that the regulations of weight there before mentioned, should not be deemed or construed to extend to any waggons, carts, or other carriages, employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthreshed: And whereas great inconvenience will result to persons employed in husbandry, if the said exemption, in respect of waggons, carts, or other carriages laden with manure, and the cattle drawing the same, should be prevented from taking place, by reason only of any empty basket or baskets, empty sack or sacks, being on or upon any such waggon, cart, or carriage, if the loading hereof is substantially manure, hay, straw, fodder, or corn unthreshed: And whereas great uncertainty has prevailed, as to the tolls claimed on carriages or horses, liable to separate tolls, when affixed, tied, or secured to some waggon, cart, or other carriage, and much inconvenience has arisen herefrom: it is therefore enacted, that in every case in which under any act of parliament for making, widening, and enlarging, repairing, or otherwise relating to any turnpike road, there is an exemption from toll or duty in respect of any horse, mule, ass, oxen, waggon, cart, or other carriage, carrying or drawing any dung, mould, soil, marl, lime, or compost, of any nature or kind soever, for manuring or improving the land, or hay, straw, or any other fodder or cattle, such exemption shall be deemed to extend, in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same, going empty, or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty, with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall for the purposes aforesaid go to or return from any parish or place in which the said turnpike road does not lie.

f. 2. Provides that for the preventing of frauds on toll collectors, by carts or waggons passing empty, or loaded only with implements necessary for the more convenient carriage of, or for loading or unloading manure, through turnpike gates, under pretence of going for such manure, the owner or driver of every empty waggon, cart, or carriage, claiming the exemptions hereby extended, any or either of

Extending the exemption from toll in certain cases, where not specifically exempted by former acts.

To prevent frauds, the tolls on empty carriages to be first paid, and afterwards returned.

them, shall in all cases pay the toll in respect of such waggon, cart, or carriage, before the same shall be permitted to pass through such turnpike gate, and that the collector of such toll shall thereupon deliver to such owner or driver a ticket, to be marked 'manure exemption,' with the name of the gate and the date when delivered, and the amount of the toll so paid; all which sum and sums so paid shall be repaid to the owner or driver of such waggon, &c. upon his returning on the same day with such waggon, &c. so laden as aforesaid, and producing such ticket; and every collector of such toll refusing or neglecting to return the same upon the return of such waggon, &c. and production of such ticket as aforesaid, shall for every such offence forfeit and pay to the owner of such waggon, &c. a penalty of not less than 10s. or more than 40s. upon conviction thereof before one justice for the county, shire, or place where such offence shall be committed, upon the oath of one credible witness; and if the same shall not be paid upon such conviction, to commit the person so offending to the common gaol or house of correction for the said county, &c. for any time not exceeding one month.

Persons aggrieved to appeal to justices of peace where offence committed.

By *f. 3.* If any person shall think himself aggrieved by any thing done by any justice in pursuance of this act, in such case such person may appeal to the justices of the peace to be held for the limits, (a) wherein the cause of such complaint shall arise, such appellant giving such notice, and entering into such or the like recognizance as by the said 13 G. 3. c. 78. is in that case directed, and thereupon such proceedings shall be had and taken as in the said recited act are directed, in respect of appeals under the authority of that act, as if such powers and regulations were herein repeated and re-enacted.

Regulations of weight in 13 G. 3. not to extend to manure waggons, &c. by reason of their having empty baskets, sacks, &c.

By *f. 6.* The regulations of weight in the 13 G. 3. c. 78. shall not be construed to extend to any waggon, &c. laden with manure for land, passing through any turnpike gate, so as to subject the owner or driver thereof to the payment of toll in respect of over-weight, by reason of any empty baskets or baskets, empty sack or sacks, or tubs, for more convenient carriage, or spade, shovel, or fork, necessary for loading or unloading such manure, being in or upon any such waggon &c. in addition to such manure, if the loading thereof is substantially manure for land as aforesaid, provided that the felles of the wheels of such carriages, &c. are of the breadth of

(a) Here seems an omission of the description of meeting to be holden. K.

gauge of six inches or more, and that such waggon, together with the loading thereof, shall not exceed three tons in the summer, and two tons 10 cwt. in the winter; and to every cart having the fellies of the wheels of less breadth than six inches, two tons in winter, and two tons 10 cwt. in summer; and that it shall be deemed summer from *May 1. to Oct. 31.* both days inclusive, and winter from *Nov. 1. until April 30.* both days inclusive.

By *J. 7.* Whereas coaches, chariots, chaises, chairs, carts, and other carriages, sometimes pass through turnpike gates, affixed, tied, or secured to waggons or carts; and horses are sometimes sent under the charge of the drivers of such waggons and carts, and are fastened thereto, and it is expedient to determine what toll such coaches, &c. ought to pay on passing through such gates; be it therefore enacted, that where any coach, &c. with four wheels, shall pass through any turnpike gate, affixed, tied, or secured to any waggon or cart, it shall be liable to the same toll, and no more, as if it had passed through the said turnpike gate drawn by two horses; and in case any chair, &c. with two wheels only, shall pass through any turnpike gate, so affixed, tied, or secured to any waggon or cart as aforesaid, it shall be liable to the same toll, and no more, as the same would have been if passing through the said gate drawn by one horse only; and where any horse shall be fastened to but not used in drawing any waggon, cart, or other carriage, such horse shall not be liable to a higher toll than a single horse; provided, that if any coach, &c. or other carriage, so affixed, tied, or secured shall have any goods conveyed therein, other than the harness thereof, and such articles of package as may be necessary for the protection of such carriages, the same shall be liable to double the toll hereby imposed.

And by 53 G. 3. c. 82. reciting that whereas by a clause in the 13 G. 3. c. 84. it is enacted, that the regulations of weight thereinbefore mentioned should not be deemed or construed to extend to any waggon, cart, or other carriage, employed only in husbandry, or carrying only manure for land, hay, straw, fodder, or corn unthrashed: And whereas by a clause in 52 G. 3. c. 145. it is enacted, that the regulations of weight in the beforementioned act of the 13 G. 3. shall not be deemed or construed to extend to any waggon, cart, or other carriage, laden with manure for land, passing through any turnpike gate, so as to subject the owner or driver thereof to the payment of toll in respect of overweight, by reason of any empty basket or baskets, empty sack or sacks, for more convenient carriage, or spade, shovel or fork, necessary for loading and unloading such manure, being in and

Regulation as to payment of toll, when coaches, &c. are affixed to waggons, &c. or saddle horses sent by drivers of waggons,

upon any such waggon, cart, or carriage, in addition to such manure, if the loading thereof is substantially manure for land as aforesaid; provided that the fellies of the wheels of such carriages, waggons, carts, or other carriages, are of the breadth or gauge of six inches or more, and that such waggon, together with the loading thereof, shall not exceed three tons in the summer, and two tons ten cwt. in the winter; and to every cart, having the fellies of the wheels of less breadth than six inches, two tons in winter, and two tons ten cwt. in summer: And whereas the said proviso in the said last-mentioned clause in the said act of the 52 G. 3. is by experience found to be inconvenient, and to operate to the discouragement of husbandry, it therefore is enacted, that so much of the said last-mentioned clause as relates to the breadth of the fellies of the wheels of such waggons, carts, or other carriages, and the weight of such waggons and carts, together with the respective loading thereof, shall be and from henceforth shall stand absolutely repealed.

Proviso in
52 G. 3. c. 145.
respecting
breadth of
wheels and
weight of wag-
gons, &c. re-
pealed.

Nor shall toll be
demanded either
for carriage, or
cattle, on ac-
count of empty
baskets, licks,
&c.

§. 2. And from and after the passing of this act, the owner or driver of any waggon, cart, or other carriage, laden with manure for land, passing through any turnpike gate, or otherwise passing on or across any turnpike road, shall not be liable to pay any toll, nor shall any toll be demanded for such carriage so laden, or the cattle drawing the same, by reason only of any empty basket or baskets, empty sack or sacks, for more convenient carriage, or spade, shovel, or fork, necessary for loading or unloading such manure, being in or upon any such waggon, cart, or other carriage, in addition to such manure, if the loading thereof is substantially manure for land as aforesaid; any thing in any act contained to the contrary thereof notwithstanding.

To preserve the
exemptions from
toll on manure
granted by local
acts.

§. 3. And whereas, by another clause in the said act of the 52 G. 3. c. 145. the exemption from toll in respect of cattle or carriages going empty or returning empty, having been laden with any dung, mould, soil, marl, lime, or compost, of any nature or kind soever, for manuring or improving land, or hay, straw, or any fodder for cattle, is restricted to such cattle or carriages going empty or returning so laden on the same day: And whereas, by several particular or local acts for making or repairing turnpike roads, the exemption from toll for and in respect of cattle and carriages going empty and returning so laden, has been granted without such restriction; it is therefore enacted, that so much of the said clause as limits the exemption from toll granted by such particular or local acts to cattle or carriages returning the same day, be repealed; and that all the provisions

of such several particular or local acts for making or repairing turnpike roads, which grant the said exemptions without such restrictions as aforesaid, shall stand and be in full force.

f. 5. This act to be a public act, and shall be judicially Public act. taken notice of as such, without being specially pleaded.

X. Carriages to be marked.

For the better discovery of offenders, the owner of every waggon, wain, or cart, and also of every coach, post-chaise, or other carriage let to hire, shall cause to be painted upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used on any turnpike road, his christian and surname, and place of abode, in large legible letters, and continue the same thereupon. And the owner of every common stage waggon or cart, employed in travelling stages from town to town, shall over and above his christian and surname, cause to be painted on the part, and in the manner aforesaid, the following words: — COMMON STAGE WAGGON (or CART, as the case may be). And every person using any such carriage upon any turnpike road without the names and descriptions so painted thereon respectively, or who shall paint or cause to be painted on such carriage any false or fictitious name or place of abode, shall forfeit for every offence, not exceeding 5*l.* nor less than 20*s.* 13 G. 3. c. 84. *f. 68.*

And if any person shall upon any turnpike road, drive or act as the driver of any waggon, wain, cart, or carriage, not being marked as aforesaid, the constable, surveyor, or any other person may apprehend and carry him before a justice, and on conviction by confession or oath of one witness, he shall forfeit not exceeding 5*l.* nor less than 10*s.* *f. 21.*

XI. Driver misbehaving.

If the driver of any cart, carriage, dray, or waggon, shall ride upon the same in any street or highway, not having some other person on foot or on horseback to guide the same (such carriages as are conducted by some person holding the reins of the horse or horses drawing the same excepted;) — or if the driver of any carriage, on any part of any street or highway, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage

riage passing or being upon such street or highway ; — or shall quit the highway, and go on the other side of the hedge or fence inclosing the same ; — or wilfully be at such distance from such carriage, or in such situation that he cannot have the direction and government of the horses or cattle drawing the same ; — or shall, by negligence or wilful misbehaviour, prevent or hinder the free passage of any other carriage or of his majesty's subjects ; — or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage ; — or if any person shall drive or act as the driver of any such coach, post-chaise, or other carriage let for hire, or waggon, wain, or cart not having the owner's name, as hereby required, painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriage : he shall, on conviction before one justice, by confession or view of the justice, or oath of one witness, forfeit any sum not exceeding 10s. in case the driver shall not be the owner of such carriage ; and if the offender be the owner, then any sum not exceeding 20s. ; and in default of payment, shall be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid. And every such driver may, without any warrant, be apprehended by any person who shall see such offence committed, and shall be immediately conveyed to a constable or other peace officer, in order to be carried before a justice. And if such driver shall refuse to discover his name, the justice shall commit him to the house of correction for any time not exceeding three months ; or may proceed against him for the penalty by a description of his person and the offence, and expressing in the proceedings that he refused to discover his name. 13 G. 3. c. 84. s. 40.

XII. *Powers of the general highway acts transferred in aid of turnpike roads.*

Turnpike surveyor may act in the same manner as the township surveyor.

Whereas the powers given by several turnpike acts are ineffectual for providing materials for the use of the turnpike roads therein described ; and also for enlarging, diverting, and turning such turnpike roads ; and stopping up, and selling the old roads ; and also for making, opening, and cleansing ditches and drains, and the cutting and pruning of hedges and trees ; and also for calling forth the statute duty which shall belong to such turnpike roads ; the surveyor of

of every turnpike road may, with the approbation of the trustees, put in execution the several powers more amply given for the like purposes in the general highway act or acts, as fully and amply as the surveyors of the several parishes or townships can or may do, by virtue of such general highway act or acts. 13 G. 3. c. 84. s. 70.

XIII. Statute duty and other labour on turnpike roads.

The turnpike surveyor shall cause the statute duty required by the several turnpike acts, and compositions arising from the same, to be performed, laid out, and expended upon the turnpike road lying within the parish, township, or place, from which such duty shall be required, and not elsewhere, on pain of 40s. for every misapplication. 13 G. 3. c. 84. s. 32.

Statute duty to be performed within the district.

No surveyor shall gather or cause to be gathered any stones for the use of the highways upon the common fields, or inclosed lands of any person, without the consent of the occupier, or a license from a justice, after having summoned such occupier to come before him and heard his reasons, if he shall appear and give any, for refusing his consent. s. 61.

Getting materials.

And when any materials shall be got by any turnpike surveyor, in the several or inclosed grounds of any person for the use of any turnpike road under the authority of this act, or of the said general highway act or acts, satisfaction shall be made by the trustees of such turnpike road to the owner or occupier of such grounds for the materials so to be got, and also the damages in carrying the same away, in such manner as satisfaction is to be made by the said general highway act or acts. s. 71.

And on every turnpike road, where a sufficient quantity of stone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams required to perform statute duty upon the same, the surveyor, with the approbation of the trustees, shall contract for the getting and carrying thereof at some time and place to be fixed for that purpose, of which ten days' notice (p) in writing shall be given, by fixing the same on the door of the church or chapel, or if there be no church or chapel then at the most public place there, which notice shall specify the work to be done, and the time and place for letting thereof; and if any surveyor shall have any share in the contract, or in any other contract for work or materials, or shall let to hire any team, or sell or dispose of any timber, stone, or other ma-

terials,

terials, unless a license in writing for the sale of such materials, or for letting to hire such team, be first obtained from the trustees, he shall forfeit 10l., and be incapacitated to be employed as surveyor. *s. 36.*

Proportioning
the statute duty
between several
turnpike roads,
under several
acts.

Where there are two or more turnpike roads under several acts of parliament within the same parish, township, or place, and the statute duty directed by all such acts for the repair of such turnpike roads shall exceed three days' duty in the whole, two justices at a special sessions may proportion the statute duty betwixt such turnpike roads and the other highways in such parish, township, or place in such manner as they shall think fit, having first summoned the clerks and surveyors of the turnpike roads, and likewise the surveyor of the highways for such parish, township, or place. *s. 32.*

Agreement with
persons obliged
to repair by te-
nure or other-
wise.

Whereas many persons are liable by tenure, inclosure, or otherwise, to the repair of certain highways which having become turnpike roads are more used and occasion an increase of expence in repairing the same, which ought in some degree to be laid upon the turnpike road, the trustees of such turnpike road may agree for the repair thereof (q) with the person liable to repair the same, in such manner as they shall think fit, and contribute so much to the repair thereof out of the tolls, or out of the statute duty belonging to the same, as they shall think just and reasonable. *s. 62.*

Repair of turn-
pike roads di-
verted.

Where parts of highways or turnpike roads have been or may be turned by legal authority, to make the same nearer or more commodious, the inhabitants or other persons who were liable to the repair of the old highway or road shall be liable to the repair of the new, or so much thereof as shall be equal to the burthen and expence of repairing such old highway or road from which they are exonerated by turning the same as aforesaid; And if the several parties interested cannot agree, the same shall be viewed by two justices and settled by them (r): and if it shall be found more convenient to fix a gross sum, or annual sum to be paid by the inhabitants or other such persons, towards the repair of the new highway or road instead of fixing the part or proportion of such new highway or road to be repaired by them, the said justices may, with the consent of such person or persons, and of the inhabitants obtained at a vestry or publick meeting (s) for that purpose, and also of the trustees at a public meeting if it be a turnpike road, order and direct the same accordingly, which order shall be and ever continue binding. *s. 63.*

Repair of the
fences where a
road has been
diverted.

H. 28 G. 3. R. v. The commissioners of Islandico district of roads. Rule, calling on the defendants, who were acting trustees appointed under an act 5 G. 3. for widening and repairing

pairing certain roads in *Carmarthenshire*, and continued by the 26 G. 3., to shew cause why a mandamus should not issue, commanding them to cause to be repaired a wall on each side of the road leading through the church-yard of *Llandilofour*, in the said county. In the year 1765 an ancient road leading through the town of *Llandilofour*, which went along the outside of the church yard, was, by an order of the trustees, carried through the middle of the church-yard, at which time the trustees caused a wall to be built at their sole expence at each side of the road so diverted, which they have ever since repaired till within the last three years. By a clause in the act it is enacted, "That the trustees shall apply the money raised by the tolls, &c. in erecting gates and toll-houses, and repairing and widening the said roads within their respective districts, and defraying the necessary costs, charges, and expences attending the same, and the execution of the said act." — *Ashurst J.* As no clause is inserted in the act which throws the *onus* of repairs on the trustees, we cannot make them liable. — *Buller J.* We cannot make the justices liable by implication, if the act has not expressly declared them to be so: What is meant by a road in the act, is the surface over which the subjects have a right to pass. — *Grose J.* Suppose trustees under an act of parliament make a road through private property, for which the party is entitled to satisfaction, the jury in assessing the damages must be taken to give him as much as will, besides the value of the land, indemnify the party for the expence of keeping up the fences between the road and the inclosure. Rule discharged. 2 T. R. 232.

When the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway, being turnpike road, and the court before whom the indictment or presentment shall be preferred shall impose a fine for the repair of such road, the same shall be proportioned, together with the costs and charges between such inhabitants and the turnpike trustees; and the court may order the treasurer of such turnpike road to pay the same out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the security of the creditors who have advanced their money upon the credit of the tolls. 3 G. 3. c. 84. s. 33.

R. v. J. of Upper Papworth, T. 42 G. 3. The defendants were convicted upon an indictment, for non-repair of a turnpike road: the indictment was removed by *certiorari*: and a rule was obtained calling upon the trustees to shew cause

Turnpike road
indicted or pre-
sented.

cause why the fine and charges should not be apportioned between themselves and the parish. It was objected that according to the 13 G. 3. c. 84. s. 33. the application could only be made to the assizes, where the indictment was originally preferred. But L. *Ellenborough* C. J. held the true construction to be that the court which imposes the fine shall have power to apportion it. — 2 E. R. 413.

In what case the statute duty on turnpike roads may be dispensed with.

Where any turnpike road is in such a state and condition that the statute duty required to be performed upon the same, or some part thereof, may be dispensed with, and employed more conveniently for the benefit of the other public highways within the parish, township, or place, the justices at a special sessions, upon application to them made by the surveyor of such parish, township, or place, may summon the clerk and surveyor of the turnpike road to appear before them at some other special sessions, and then and there produce before them a state of the revenues and debts belonging to such turnpike road: And if it shall appear to them that the whole or any part of the statute duty may conveniently be dispensed with from such turnpike road without endangering the securities for the money advanced on the credit of the tolls, they may order (t) the whole or part of such statute duty to be performed upon the highways not being turnpike, within such district, during such time as to them shall seem just and reasonable. s. 58.

XIV. *Annoyances to be removed.*

Rubbish or other matter left upon the road.

If the surveyor of any turnpike road shall suffer to remain for the space of four days, in any part thereof, within 10 feet on either side of the middle of the road any post, heap of stones, rubbish, or earth, set up or raised in or above the surface of the said road by which the passage thereof may be obstructed, impeded, confined, or straightened, (except posts, blocks, stones, or banks of earth fixed in the ground or raised for securing horse or foot roads, or passages for water, and also direction posts and stones;) he shall forfeit 40s. 13 G. 3. c. 84. s. 37.

Encroaching.

If any person shall encroach by causing to be made any hedge, ditch, or other fence, on any turnpike road, within 30 feet from the middle thereof; or shall plough, harrow, or break up the soil of any ground, or in ploughing or harrowing the adjacent lands shall turn his plough or harrow on any ground within the distance of 15 feet from the middle thereof as aforesaid, he shall forfeit 40s. to him who shall make information thereof: And the trustees, or five of them, may cause such hedge, ditch, or fence to be taken down

down or filled up, at the expence of the person to whom the same shall belong. And one justice, on proof thereof upon oath, may levy as well the expences of taking down such hedges as aforesaid, as the several penalties hereby imposed, by distress and sale, rendering the overplus if any. *f. 38.*

The trustees, or five of them, at a public meeting may, if they think fit, direct prosecution by indictment for any nuisance upon the turnpike road, at the expence of the tolls; provided that proof can be had, by confession of the offender, or by one witness. *f. 47.*

Annoyances
prosecuted at
the expence of
the tolls.

XV. *Side gates.*

No side gate shall be erected on any turnpike road, unless the same be ordered by the trustees at a meeting, of which 21 days' notice shall have been given in writing affixed upon all the toll gates erected on such roads, and also in some public newspaper circulated in that part of the country, specifying the place where such side gate is proposed to be erected; and unless nine trustees at least, (being a majority of those present,) shall sign the said order at such meeting. *13 G. 3. c. 84. f. 34.*

Provided that no person shall be liable to pay toll at any gate erected, or to be erected across or on the side of any turnpike road, or be subject to any penalty for any carriage horse, or beast, which shall only cross such road, and shall not pass above 100 yards thereon, except over some bridge erected at a considerable expence by the trustees of such turnpike road. *Id.*

But by *14 G. 3. c. 57.* after reciting the above clause, and that the same takes away or lessens the tolls of certain gates erected by the authority of former acts, and is injurious to persons who have lent money on the security of such tolls, the same is repealed, so far as affects any gate authorized to be set up at any place particularly mentioned in any act for repairing any road passed before the making of the said act of *13 G. 3. c. 84.*

XVI. *Farming the tolls.*

The trustees of any particular turnpike act, or any seven or more of them, at a public meeting may let to farm the tolls, though no express power to let the same be given by such act: And whenever any tolls shall be let to farm, the following directions shall be observed; that is to say, the trustees shall cause notice (u) to be given of the time and place

place for letting the same at least one month before by fixing the same upon every toll gate belonging to such turnpike road, and also upon the market cross of the market town nearest to the place where the tolls are to be let, and also in some public newspaper circulated in that part of the country, and specifying in such notice the sum which the said tolls produced in the preceding year, clear of the salary for collecting the same, (in case any hired collector was appointed,) and that they will let such tolls by auction to the best bidder on his producing sufficient sureties for payment of the money monthly or quarterly as shall be required by the trustees; and that they will be put up at the sum which they were let for, or did produce, in the preceding year, clear of the salary of the collector: And the trustees shall provide a glass with so much sand in it as will run from one end of it to the other in one minute, which glass shall be set upon a table, and immediately after every bidding the glass shall be turned; and as soon as the sand is run out it shall be turned again, and so for three times, unless some other bidding intervene; and if no other person shall bid, until the sand shall have run through the glass for three times, the last bidder shall be the farmer of the tolls. And if no bidder shall offer, the trustees may appoint a collector, or fix some future day for the letting thereof as aforesaid, and in that case may put them up at such sum as they shall think fit. And if the farmer of the tolls shall take a greater or less toll than he ought to do, he shall forfeit 5l., and also the contract, if the trustees shall think fit to vacate the same: And every other gatekeeper who shall take a greater or lesser toll than as aforesaid, shall forfeit 40s. 13 G. 3. c. 84. s. 31.

XVII. *Mortgagee to account.*

Every mortgagee, that shall have taken possession of any toll-gate or bar, or of any lands or tenements the rents and profits whereof are appropriated to the repairs of any part of any turnpike road shall, within fourteen days after notice received by him in writing from the trustees, or any five of them, render upon oath to be administered, and taken by and before one justice or any trustee, an exact account in writing to such trustees, or any person appointed by them, or any five of them, to be named in such notice, of all money received by him or by any other to his use at such toll gate or otherwise, and what he hath expended in keeping or repairing the same. And if he shall neglect to render such account, he shall, on conviction in a summary manner before one justice,

ice, forfeit for every refusal or omission the sum of 10l. to the use of the road. 13 G. 3. c. 84. s. 52.

And if the mortgagee shall keep possession after he hath received the full sum due to him and interest with costs, he shall forfeit double the sum that he shall have received over and above what was due to him, with treble costs; to be recovered by the trustees, or by their clerk or treasurer, in any of his majesty's courts of record; to be applied to the use of the roads. s. 53.

XVIII. *Power of lessening the tolls.*

Where any turnpike road shall be sufficiently or in a great degree repaired, and the greatest part of the money borrowed upon the credit thereof hath been paid, the trustees or seven of them at a meeting for that purpose, of which one calendar month's notice shall be given in writing, to be affixed on all turnpike gates upon such road and in some public newspaper circulated in that part of the country, may lessen the tolls during such time as they shall think proper, and afterwards advance the same, if they see occasion, not exceeding the rates allowed by this act. 13 G. 3. c. 84. s. 29. Provided, that where the whole money borrowed on the credit of tolls shall not have been discharged, no such toll shall be lessened without the consent of the person or persons entitled to five-sixths of the money remaining due upon such respective tolls. s. 30.

XIX. *Demolishing gates and doing other damage.*

1. If any person shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy any turnpike-gate, post, rail, wall, chain, or other fence, set up to prevent passengers from passing without paying toll; or any house erected for the use of such turnpike gate; or any crane, machine, or engine, for weighing carriages; or shall forcibly rescue any person lawfully in custody for any of the said offences; he shall be adjudged guilty of felony, and transported for seven years, or committed to prison for any time not exceeding three years, at the discretion of the judge or court before whom the offender shall be tried. And the indictment for such offence may be inquired of, heard, and determined in any adjacent county. 13 G. 3. c. 84. s. 42. And the hundred shall answer damages to be levied as in cases of robbery. s. 43. If the trustees shall erect or continue a gate where they have no power so to do, the justices in sessions, upon complaint,

Destroying gate or engines.

Vide Priv. Statute 48 Geo. 3. Ch 26 Sec 14

Destroying direction posts, blocks, mile stones, or parapets of bridges.

plaint, may hear and determine the same in a summary way and order the sheriff to remove it. *f. 51.*

2. Where several highways meet, the trustees shall direct the surveyor to erect a stone or post, with an inscription thereon in large letters containing the name of and distance from the next market town or towns or other considerable place or places to which the said highways respectively lead and also, at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, graduated stones or posts, denoting the depth of water in the deepest part thereof, and likewise such direction posts, or stones, as the trustees shall judge necessary for the guiding of travellers in the best and safest tract through the said floods or waters; and also shall order the surveyor to erect mile stones or posts upon such turnpike road, with proper inscriptions and figures thereon, denoting the names and distances from the principal towns or places on each respective road and from time to time to repair the same and keep legible the inscriptions, and if for the space of three months after directions so given, he neglect or refuse so to do, he shall forfeit 20s. *f. 41.*

And if any person shall wilfully or wantonly pull down, destroy, obliterate, or deface any mile stone or post, graduated or direction post or stone, or shall pull up, cut down and remove or damage any post, block, or stone fixed in the ground for securing any horse causeway or foot causeway on the side of any turnpike road, or drive carriages upon such banks or causeways, or dig or cut down any bank of earth cast up for the said purpose, or shall break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges; he shall, on conviction before one justice, upon view or by the oath of one witness forfeit not exceeding 5l. nor less than 10s.; and in default of payment, shall be committed to the house of correction there to be whipped and kept to hard labour not exceeding one calendar month, nor less than seven days, unless the same be sooner paid. *f. 39.*

XX. *Of tolls, and the penalty of evading the tolls, or obstructing the execution thereof.*

Unloading goods.

1. If any person shall unload any goods before they come to the turnpike gate or weighing engine; or shall lay upon such carriage, after it shall have passed the gate or engine any goods, taken from any horse, cart, or other carriage belonging to or hired or borrowed by the same waggoner or

carriage

carrier, in order to avoid the payment of the respective additional tolls ;

Or if any person shall so unload, in order to carry considerable quantities of goods through any turnpike gate in one and the same day, and thereby pay less toll at such gate than would have been paid if such goods had not been so unladen ;

He shall on conviction before one justice, on the oath of one witness, forfeit 5*l.* to be levied upon the goods of the owner of the carriage ; and the driver, not being the owner, so offending, and being convicted thereof as aforesaid, shall be committed to the house of correction for the space of one month. 13 G. 3. c. 84. *s.* 10.

2. If the owner or driver shall turn out of the road, in order to avoid weighing or paying the toll, and shall afterwards proceed with such carriage into and on the same road, he shall, on conviction before one justice by the oath of one witness, forfeit, if he be the owner, not exceeding 5*l.* nor less than 20*s.* ; if he be the driver, and not the owner, any sum not exceeding 50*s.* nor less than 10*s.* *s.* 11.

Turning out of the road.

3. If any person shall take off or cause to be taken off any horse or other beast of draught from any waggon or other carriage, or alter or cause the distance of the wheels to be altered before the same shall come to the gate, with intent to avoid the toll forfeiture or penalty ; he shall, on conviction before one justice, on the oath of one witness, forfeit 5*l.* *s.* 17.

Taking out horses.

4. If any person shall take the benefit of any exemptions fraudulently ; he shall forfeit not exceeding 5*l.* nor less than 40*s.* *s.* 28.

Taking the benefit of exemptions fraudulently.

If any person shall resist or make forcible opposition against any person employed in the due execution of this act, or of any particular turnpike act ; — or shall assault any collector of the tolls in the execution of his office ; — or shall pass through any gate, rail, chain, or fence, without paying the appointed toll ; or shall hinder or attempt to prevent or obstruct any person in measuring the wheels of any carriage ; — or make any rescue of cattle or other goods distrained ; — or if the constable shall refuse or neglect to execute any justice's warrant ; he shall forfeit not exceeding 10*l.* nor less than 40*s.* to be paid to the surveyor for the use of the turnpike road ; and laid out in the repairs thereof ; and if not forthwith paid or secured to be paid, he shall be committed to the common gaol or house of correction, there to remain, for any time not exceeding three months, unless the forfeiture shall be sooner paid. *s.* 75.

Making forcible opposition, or passing through any gate without paying the tolls, &c.

XXI. *Levying and application of forfeitures.*

All penalties and forfeitures by this act imposed, and all costs and charges to be allowed and ordered by authority of the same, the manner of levying and recovering whereof is not hereby otherwise particularly directed, shall be levied by distress and sale of the goods and chattels of the offender, or of the person liable or ordered to pay the same respectively, by warrant of one justice, and such order for payment of such costs or charges shall be made, rendering the overplus, if any, after deducting the charges of making the same, which warrant the justice shall grant, on conviction (a. b. c. d. e. f. g.) of the offender by confession or oath of one witness, or upon such order made as aforesaid; the same to be paid half to the informer, and half to the surveyor for the use of the turnpike road, unless otherwise particularly directed. And in case such distress cannot be found, and such penalties and forfeitures or the said costs and charges shall not be forthwith paid, such justice shall commit the offender, or person liable to pay the same respectively, to the common gaol or house of correction for any time not exceeding three months, unless the said penalty, forfeiture, costs, or charges shall respectively be sooner paid. 13 G. 3. c. 84. *f. 76.*

Who may be witnesses.

Any inhabitant of any parish, township, or place where the offence shall be committed, may be a witness, notwithstanding his being an inhabitant. *f. 74.*

What justices may act.

Any justice may act in the execution hereof, notwithstanding he may be a creditor or trustee. *Id.*

And if the offender live out of the jurisdiction of the justice, any justice of the limit where the said person shall inhabit shall, on request to him made, and a true copy of the conviction for the penalty or forfeiture, or of the order for the payment of costs or charges, being produced and proved before him upon oath, cause the said penalty or forfeiture, or the said costs or charges, to be levied by distress and sale: and if no sufficient distress can be had shall commit such person to the common gaol or house of correction of such limit for the time and in the manner aforesaid. *f. 76.*

When the warrant of distress shall issue.

Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty or forfeiture, cost or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof. *f. 77.*

Provided

Provided also, that every penalty or forfeiture that shall be recovered on the information of the surveyor or toll-taker, or other person employed by the trustees, and receiving salaries or rewards for their services, and not otherwise directed by this act, shall be applied to the amending of the said turnpike roads respectively, and to no other use.

Surveyor, &c.
being the in-
former.

f. 78.

To prevent fraudulent convictions upon colourable prosecutions, the justices before whom any information shall be brought shall, in case any other information or conviction shall be set up by way of defence, proceed to examine into the real merits of such information, proceeding or conviction; and if it shall appear that the same was not done to recover and apply the penalty or forfeiture for the real ends for which it was enacted, but to favour the offender, such information or conviction shall be deemed to be fraudulent, and the justice may proceed to convict as if no such information or conviction had been made or obtained. f. 48.

Fraudulent con-
victions.

And every prosecutor or informer may, at his election, sue for and recover any forfeiture or penalty imposed by this or any other act for erecting turnpikes or repairing turnpike roads in manner following; viz. If the same shall not amount to 40s., it shall be recoverable only by information before a justice; and if it shall amount to 40s. or upwards, it shall be recoverable either before a justice as aforesaid, or by action of debt in any of his majesty's courts of record, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of ——— being forfeited by an act passed in the 13th year of his present majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being, for regulating the turnpike roads in that part of Great Britain called England, and for other purposes*; and the plaintiff, if he recover, shall have full costs. Provided, that ten days' notice in writing be given to the party offending, previous to the commencement of the action; and that the same be brought within one calendar month after the offence committed. f. 79.

Where any distress shall be made for any sum to be levied by virtue of this act, the distress shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining; but the person aggrieved by such irregularity may recover satisfaction for the special damage in an action on the case. f. 80.

Irregularity in
the proceedings.

The plaintiff shall not recover in any action for such irregularity, if tender of sufficient amends shall be made before the action brought; and if no such tender hath been made, the defendant may by leave of the court, at any time before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court. *f. 81.*

And no proceedings upon this act shall be quashed or vacated for want of form, or removed by *certiorari* or other process into any of his majesty's courts of record at *Westminster*. *f. 82.*

XXII. *Appeal.*

Appeal.

If any person shall think himself aggrieved by any thing done by any justice in pursuance of this act, except under the particular circumstances hereafter mentioned, and for which no particular method of relief is herein otherwise appointed, he may appeal to the general quarter sessions, giving notice in writing (h) to the justice of his intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognizance before a justice with one sufficient surety, conditioned to try such appeal at and abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions. And each and every justice having received notice of such appeal shall return all proceedings before them had touching the matter of such appeal to the said sessions, on pain of 5*l.* And the justices at such sessions, on proof of the notice given, and of the entering into such recognizance, shall hear and finally determine the appeal in a summary way, and award such costs to either party as they the said justices shall think proper, to be levied and recovered as hereinbefore directed. *f. 82.*

By *Stat. 4 An. c. 16. f. 4.* the defendant may plead several matters. *•Sect. 5.* Provided that if such matter shall on demurrer be judged insufficient, costs shall be given at the discretion of the court. And in *Duberley v. Page, 2 T. R. 391.* it was held that the discretion of the court only applied to the *quantum* of costs; and that the plaintiff was entitled to some costs.

Provided, that no appeal shall be made against any conviction for any penalty or forfeiture, unless the person convicted shall, at the time of the conviction, if he shall be then present, if not within six days after, give, or cause to

be given notice of his intention to appeal, and at the same time enter into recognizance, or give security with sufficient sureties, to pay such penalty or forfeiture, in case the conviction shall be affirmed upon the appeal: And on his giving such security, the further proceedings for such penalty or forfeiture shall be suspended until the appeal shall be heard and determined. *f. 83.*

XXIII. *Limitation of actions.*

If any action shall be commenced against any person, for any thing done in pursuance of this act, the same shall be commenced within three calendar months after the fact committed, and in the county where the defendant resides or the fact was committed: The defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance of this act; and if the same shall appear to have been so done, or if such action shall be brought after the time limited in any other county, the jury shall find for the defendant; and if the defendant prevail in the action he shall have treble costs.

Limitation of actions.

In pursuance of this act] *Bazing v. Skelton, M. 33 G. 3. B.R.* This was an action of assault and false imprisonment. The venue was laid in *Kent*. It appeared at the trial that the assault was committed by the defendant, a turnpike man in *Surrey*, on account of the plaintiff's attempting to pass through the gate in a chaise which the defendant thought was an hired one, and for which he insisted on the duty imposed by the stat. 25 G. 3. c. 51. on post horses; but in fact the chaise was not hired. The stat. 25 G. 3. c. 51. which imposes the duties on post horses, authorizes the gatekeepers to demand a ticket, and not to suffer any horse to pass without it. It also gives the defendants liberty of pleading the general issue. On the trial it was objected that the action should have been brought in *Surrey* where the fact was committed, by reason of the stat. 13 G. 3. c. 84. *f. 85. (a)* which as far as respects the privileges of persons acting under it, must be considered as incorporated with the stat. 25 G. 3. c. 51. they being made in *pari materia*. The plaintiff however obtained a verdict, which the court of king's bench afterwards refused to set aside. They said that the general turnpike act, which imposed certain duties on gatekeepers, in

(a) There must be a mistake in the report of this case, where the general highway act. 13 G. 3. c. 78. c. 81. is referred to: it should be the general turnpike act, 13 G. 3. c. 84. *f. 85.* (*Durnford.*)

order to protect them in the execution of their duty, had given them certain privileges; one of which was that all actions brought against them in *pursuance of that act* should be brought in the county where the fact was committed. But that the statute, on which this action was brought, had nothing to do with the repairs of highways; that it was passed for a different purpose, to raise a public tax; and that though this act had directed that in actions brought for any thing done under it the defendant might plead the general issue, it had not also directed, as in the former case, that the action should be brought in the county where the fact was committed. And they said that this was distinguishable from an action brought against a magistrate, the stat. 24 G. 2. c. 44. extending to all acts done by him in the execution of this duty. 5 T. R. 18.

Forms in the act
to be used.

The forms of proceedings under this title are specially directed by the several acts to be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case. And no objection shall be made, or advantage taken, for want of form in any such proceedings. So that it is necessary only in this place to insert the said forms as they stand in the acts: unto which are added divers forms of *indictments*, and one other precedent of an *order* for payment of a penalty or forfeiture previous to the warrant of distress.

A. Warrant for making lists of persons qualified to be surveyors.

Middlesex. To the constables, &c.

*I*N order to carry into execution an act made in the 13th year of the reign of his majesty king George the third, for the amendment and preservation of the public highways, you are hereby severally required forthwith to give public notice to the churchwardens, surveyors of the highways, and householders, being assessed to any parochial or public rate within your respective liberties, that they do assemble on the 22d day of September next, at the church or chapel, or if there shall be no church or chapel then at the usual place of public meetings within their respective liberties, at the hour of 11 in the forenoon; and that the major part of them so assembled do make a list of the names of at least ten persons living therein, who each of them have an estate in lands, tenements, or hereditaments lying within the same in their own right, or in the right of their wives, of the value of 10l. by the year,

year, or a personal estate of the value of 100l.; or are occupiers or tenants of houses, lands, tenements, or hereditaments of the yearly value of 30l. And if there shall not be ten persons having such qualifications, then that they do insert in such list the names of so many of such persons as are so qualified, together with the names of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so many can be found, if not, so many as shall be there resident, to serve the office of surveyor of the highways. And you are also severally required within three days after making the said list to deliver a copy thereof to one of the justices of the peace of the said ——— living in or near the same [parish, &c.] and also to give personal notices to or cause notices in writing to be left at the places of abode of the several persons contained in such list, informing them of their being so named, to the intent that they may severally appear before the said justices at their special sessions to be holden at ——— within the said ——— on the ——— day of ——— now next ensuing. at the hour of ——— in the forenoon of the same day, to accept such office if they shall be appointed thereto, or to shew cause, if they have any against their being appointed. And you are likewise to give notice to the present surveyors of the highways within your respective liberties to appear at the same time and place, and produce such accounts and lists before the said justices as are required by the said act. And you and each of you are personally to appear before the said justices at their said special sessions, and then and there severally deliver to the said justices the said original list or lists taken within your respective liberties; and give an account of the execution of this our precept. Given under our hands and seals the ——— day of ——— in the year of our Lord ———.

B. List of persons to be returned to the justices.

A LIST of the several persons named for surveyors of the highways for the [insert the name of the parish, township, or place,] at a meeting held at ——— in the said ——— the ——— day of ——— 1774.

A. B.

C. D. &c.

[This is to be added when a particular person is recommended] — We whose names are subscribed being two parts in three of the persons assembled at the meeting aforesaid do agree in the choice of A. S. as a fit person to serve the office of surveyor for the ——— of ——— aforesaid, and in the allowance to him ——— for his trouble in executing the same for the year en-

suing; and we do recommend the said A. S. to the justices for their appointment accordingly.

C. Notice to the persons in the list.

A. B. take notice that you were at a meeting held at — on the — day of — named as one of the persons to be returned to the justices as fit to serve the office of surveyor for the said — for the year ensuing; and if you have any cause to shew why you should not be appointed to serve such office, you must make the same appear before the justices at their special sessions to be holden at — on the — day of — next.

A. C. Constable, &c.

D. Appointment of a surveyor.

Middlesex. { At a special sessions held at — in the hundred of — by justices of the peace for the said county, acting within the said hundred, on the — day of — 1774.

WE do hereby nominate and appoint A. S. of — in the said hundred, surveyor of the highways within the said — for the year ensuing (a): And you the said A. S. are faithfully and truly to execute the said office of surveyor according to the directions of the statute passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways;" an abstract of the material parts of which statute is hereunto annexed. Given under our hands and seals the day and year above-mentioned.

E. Appointment of an assistant to the surveyor.

Middlesex. { At a special sessions held at — in the hundred of — by justices of the peace for the said county, acting within the said hundred, on the — day of — 1774.

(a) If a surveyor is appointed with a salary, then after the words year ensuing, add, And we do allow the said A. S. the salary of — for his trouble.

WE do hereby nominate and appoint A. S. a substantial inhabitant of the — of — in the said hundred, assistant to A. B. whom we have appointed surveyor of the highways for the said —. And you the said A. S. are to the best of your skill and judgment to assist the said surveyor whenever requested by him, in calling in and attending the performance of the statute duty, in collecting the compositions, fines penalties, and forfeitures, and in making and collecting the assessments, and in making out and serving the notices authorized by the act passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways," and in such other matters and things as shall be reasonably required of you by the said surveyor in the execution of his office of surveyor, pursuant to the said act; and you are justly and truly to account with and pay to the said surveyor or to his order the money which shall come to your hands by the means aforesaid. Given under our hands and seals, the day and year above-mentioned.

F. Complaint to two justices where a highway lies in two parishes. (a)

County of } *AT a petty sessions holden before J. P. and Westmorland. } K. P. two of his majesty's justices of the peace for the said county, this — day of —, J. S. one of the surveyors of the highways of the parish of A. came before the justices aforesaid, and gave them to be informed, That there is in the said county a certain common highway leading from M. to N., and that there is a certain part of the said highway, that is to say, so much thereof as lies between a certain place called C. and a certain other place called D., being in length [as the case may be] one side of which last mentioned part of the said highway adjoining to the parish of A. lies within the said parish of A. and is to be, and of right ought to be, repaired by the said parish of A., and that the other side of the same part of the said highway adjoining to the parish of B. lies within the parish of B. and is to be, and of right ought to be repaired by the said parish of B.; and stating that the repair of such part of the said highway is very inconvenient to the parishes aforesaid, and the want thereof detrimental to the public: and therefore praying, that such part of the said highway may be allotted and apportioned for the repair thereof, by the justices aforesaid, to the said several parishes of A. and B. in the manner directed by an act, passed in the*

(a) These forms are copied from those in the act.

34th year of the reign of king George the third, intituled, An act, &c.

J. S.

The above application was made to us the day and year first above written.

One of the surveyors of the highways for the parish of A.

G. SUMMONS, to be subjoined to a copy of the above information.

County of
Westmorland.

{ To the surveyors of the highways of the parish of B. in the said county, any or either of them.

WHEREAS a certain information has been given unto us J. P. and K. P. two of his majesty's justices of the peace for the said county, by J. S. one of the surveyors of the highways of the parish of A. in the said county, a true copy whereof is above written: These are, in his majesty's name, to summon you, any or either of you, to appear before us at — in the said county, on the — day of —, at —, to shew cause (if any) why an allotment and apportionment of the highway therein mentioned, should not be made, according to the provisions of the act referred to in the said information: Herein fail not. Given under our hands the — day of —.

J. P.
K. P.

H. Final ORDER and ADJUDICATION, to be filed with the clerk of the peace.

WHEREAS, &c. [here state the original application; the summons; the appearance; and that the parties were heard, or their non-appearance]. Now we the justices aforesaid, having fully heard and understood the premises, do declare, adjudge, and order, That the said highway shall be divided in the following manner; (that is to say) that at the distance of —, measuring from the place called C. there shall be erected certain posts or stones, E. and F. on each side of the said highway; and the whole of the said highway, from the place called C. to such posts or stones, shall be from time to time, and at all times hereafter, repaired by the parish of A. and the whole of the said highway from such posts or stones to the place called D. shall from time to time, and at all times hereafter, be repaired by the

the parish of B. In witness whereof we have hereunto set our hands and seals, this ——— day of ———.

J. P. (L. S.)

K. P. (L. S.)

I. Notice of the time and place for compositions.

NOTICE is hereby given, That all persons who are inclined to compound for their statute duty within the ——— of ——— are hereby required to signify their intention to compound for the same to A. S. the surveyor of the highways for the said ——— at the house of ——— of ——— on the ——— day of this instant November, between the hours of ——— and ———. And they are hereby required at the same time, or within the space of one month after, to pay their composition money to the said surveyor: And also, that all persons who are liable to pay money for the lands, tenements, woods, tithes, and hereditaments, which they occupy, or in lieu of their duty within the said ——— according to the act made in the thirteenth year of his majesty king George the third, "For the amendment and preservation of the highways," are required to pay the same to the said surveyor on the day or within the time aforesaid. Dated this ——— day of November 1774.

A. S. Surveyor.

K. Notice to perform statute duty.

A. B. you are hereby required to send (as the case shall be) to ——— within the ——— of ——— on the ——— and ——— days of ——— next at ——— o'clock in the morning of each day, in order to perform such duty upon the highways within the said ——— as shall be required by the surveyor, pursuant to the direction of the act passed in the 13th year of the reign of his majesty king George the third, "For the amendment and preservation of the highways." Dated this ——— day of ——— 1774.

If personal labour is required, then say, You are hereby required by yourself or a sufficient labourer, to attend at ——— within the, &c.

L. Notice from the surveyor to prune hedges, scour ditches, and remove nuisances.

To C. D. of ———.

IN pursuance of the directions given by the act passed in the 13th year of the reign of his majesty king George the third, "For the amendment and preservation of the highways," I
A. S.

A.S. surveyor for the highways for the ——— of ——— do hereby give you notice forthwith to cut, prune, and plash the hedges, and cut or prune the trees, and to open, cleanse, and scour the several ditches and watercourses, belonging to you, in or near the highway, lying between ——— and ——— to the intent that the water may be drained from the said highway, and that the sun and wind may not be excluded from such highway, to the prejudice thereof:

[Or, forthwith to remove the dung, timber, stone, &c. placed by you in a certain part of the king's highway, lying between ——— and ——— in the ——— of ——— to the obstruction and annoyance of the said highway.]

Dated this ——— day of ——— 1774. A.S.

M. Allowance of charges to the surveyor for removing the same.

Middlesex. **WHEREAS** complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace for the said county, by the oath of A. S. surveyor of the highways for the ——— of ——— in the said county, that A. O. of ——— having had due notice to cut and prune his hedges and cleanse and scour his ditches and watercourses within or adjoining to the public highway between ——— and ——— in the said ——— of ——— hath neglected to do the same within the time required by such notice, and that the said A. S. hath caused the same respectively to be cut, pruned, cleansed and scoured pursuant to the directions of the act passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways," and hath expended therein the sum of ———, as appears by an account now produced to me, which I think a reasonable charge, and do therefore allow the same, and hereby order the said A. O. to pay the said sum of ——— to the said A. S. within six days from the time of his being served with this order. Given under my hand and seal this ——— day of ——— 1774.

N. Order of a justice to make new drains.

Middlesex. { To A.S. of ——— surveyor of the highways
for the ——— of ———.

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace for the said county, that the ditch, gutter, or watercourse, for conveying the water from the highway at ——— in the ——— of ——— in the said county,

county, is not sufficient for that purpose, and that the cleansing and opening the same will not effectually carry off the said water, but that the said highway may be effectually drained and the water carried off by making a new ditch or drain through the lands or grounds of ——— lying near the same, for the length of ——— yards and the breadth of ——— feet; and the said ——— having been duly summoned to appear before me to shew cause, if he had any, why the said ditch or drain shall not be made, and the said ——— not appearing (or, not shewing sufficient cause against the same), and it appearing to me that such ditch or drain is necessary, I do hereby order and require you to enter into and upon the said lands of the said ———, and there make or cause to be made a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said ——— for the damages to be done thereby, within one calendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways." Given under my hand this ——— day of ——— 1774.

O. Precept for erecting guide posts or water marks.

Middlesex. { At a special sessions held at ——— for the hundred of ——— in the said county, before justices of the peace for the said county, acting within the said hundred, on the ——— day of ——— 1774.

To the surveyor of the ——— of ——— in the said hundred.

YOU are hereby required forthwith to erect, or cause to be erected, in the most convenient place upon the highway lying between ——— and ——— within your liberty, where the roads cross or branch out, a guide post with proper inscriptions, painted on both sides thereof, in large legible letters, denoting the towns of ——— and ——— (or other places as the justices shall think proper;) and you are allowed to charge the reasonable expences of providing and erecting the same in your accounts.

Where graduated stones or posts are necessary to prevent accidents from water, it may be varied thus:—In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called ——— at ——— within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes ———.

P. Order

P. Order for widening or diverting an highway.

Middlesex. *WE* ——— two of his majesty's justices of the peace for the said county, acting within the hundred of ——— within the said county, having upon view found that a certain part of the highway between ——— and ——— in the (parish, &c.) of ——— in the said hundred, for the length of ——— yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greatest part thereof narrow, and may be conveniently enlarged and widened, by adding thereto from the lands and grounds of ——— and ——— of the length of ——— yards or thereabouts, and of the breadth of ——— feet or thereabouts, particularly described in the plan hereunto annexed, which we think will be much more commodious to the public; we do hereby order that the said highway be widened and enlarged through the lands aforesaid; and that the surveyor of the highways for the ——— of ——— where the said old highway lies do forthwith proceed to treat and make agreement with the said ——— and ——— for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the statute made in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways:" And in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said ——— of ——— and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said act.

If the road is to be turned, then after the words, *is for the greatest part thereof narrow*, say, and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; and having viewed a course proposed for the said new highway through the lands and grounds, &c. And afterwards, instead of the words, *be widened and enlarged*, say, *be diverted and turned*.

Q. Certificate to the sessions thereupon.

To the justices of the peace at their general quarter sessions to be held at ——— in the said county, the ——— day of ———

Middlesex.

1774.

WE

WE the within named A.B. and C. D. do hereby certify to the said court of quarter sessions that we made and signed the within order; and that, with our approbation, and by our direction, the said surveyor hath treated with the said ——— and ——— for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them or either of them; and that he tendered to the said ——— the sum of ——— and to the said ——— the sum of ——— as a recompence for the said ground, and for making the said ditches and fences which they, and each of them, refused to receive.

R. Order for stopping up an old way.

WE whose names are subscribed, being the justices of peace who have viewed the several highways described in the plans hereunto annexed, and made an order for diverting the old highway, and being satisfied that the new highway therein described is properly made and fit for the reception of travellers, do hereby order the said old highway, being of the length of ——— yards and of the breadth of ——— feet upon a medium, as appears by the said plan, to be stopped up, and the land and soil thereof to be sold by the said surveyor to ——— whose land adjoins thereto, if he shall be willing to purchase the same, for the full value thereof; if not, to some other person or persons, for the full value thereof.

This is to be added, if needful; and to be varied as circumstances may require: — Reserving nevertheless to — a free passage for persons, horses, cattle, and carriages, through the land and soil of the said old highway to and from the (land, &c.) belonging to him, called ——— according to his ancient usage thereof.

S. Order for turning a highway through any person's lands, with the owner's consent.

Middlesex. WE ——— and ——— esquires, two of his majesty's justices of peace for the said county, at a special sessions held at ——— in the hundred of ——— in the said county, on the ——— day of ——— 1774, having upon view found that a certain part of a highway within the ——— of ——— in the said hundred, lying between ——— and ——— for the length of ——— yards or thereabouts, and particularly described in the plan hereunto annexed, may be diverted and turned so as to make the same nearer [or, more commodious] to the public; and having viewed a course proposed for the new highway

highway in lieu thereof through the lands and grounds of ——— of the length of ——— yards or thereabouts, and of the breadth of ——— feet or thereabouts, particularly described in the plan hereunto annexed, and having received evidence of the consent of the said ——— to the said new highway being made through his lands hereinbefore described, by writing under his hand and seal: we do hereby order that the said highway be diverted and turned through the lands aforesaid; and we do order an equal assessment, not exceeding the rate of 6d. in the pound to be made levied, and collected upon all and every the occupiers of lands tenements, woods, tithes, and hereditaments in the said ——— of ——— and that the money arising thereupon be paid and applied in making recompence and satisfaction for the same unto the said ———.

T. Form of such consent.

I A. B. of ——— in the county of ——— being owner of the lands described in the plan hereunto annexed, through which part of a certain highway lying between ——— and ——— is intended to be diverted and turned, in consideration of the sum of ——— to be paid to me for the said land and the soil thereof [or, in consideration of the said old highway being sold, exchanged, &c. and to be vested in me, and also of the sum of ——— to be paid to me, as the case may be] do hereby consent to the making and continuing such new highway through my said lands. Given under my hand and seal, this ——— day of ——— 1774.

U. Notice of application to be made for a general assessment.

Middlesex. *NOTICE* is hereby given that application will be made to the justices of the peace acting for the hundred of ——— in the said county, at their special session to be held at ——— in the said hundred, on the ——— day of ——— 1774, for an equal assessment to be made, not exceeding ——— in the pound upon all and every the occupiers of lands tenements, woods, tithes, and hereditaments, within the ——— of ——— for the use and benefit of the highways within the said ———. Dated this ——— day of ——— 1774.

A. B. Surveyor.

V. Order for such general assessment.

Middlesex. { At a special sessions for the highways, held at ——— in the hundred of ——— in the said county, the ——— day of ——— 1774, by justices of the peace for the said county acting within the said hundred.

UPON application made to us by the surveyor of the highways for the ——— of ———, and upon evidence given upon oath before us that the duty directed to be performed and the money authorized to be collected and received by an act passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways," have been performed, applied, and expended according to the directions of the said act;

[Or, — upon evidence given upon oath before us, we are fully satisfied that the common highways, bridges, causeways, streets, and pavements belonging to the ——— of ——— are so far out of order that they cannot be sufficiently amended and repaired, paved, cleansed, and supported by the means prescribed by an act passed in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways;"]

And it appearing to us, that notice hath been duly given of such intended application, according to the direction of the said act, we do hereby order, direct, and appoint that an equal assessment, not exceeding the sum of ——— in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within the said ——— of ——— shall be forthwith made by the said surveyor, and shall be allowed by one justice of the peace for the said hundred, and shall be collected by the said surveyor; and that the money so to be assessed and collected shall be applied for and towards the amending, repairing, paving, cleansing and supporting such highways, causeways, streets, pavements, and bridges, and for buying materials (a), making satisfaction for damages, erecting guideposts, and paying the surveyor's salary, and for other purposes as directed by the said act.

(a) If no assessment has been made, this may amount to nine-pence in the pound; but if a sixpence assessment has been already made, this must be only three-pence.

W. Surveyor's oath on passing his accounts.

I A. B. do swear, that the accounts now produced and delivered by me, a surveyor of the highways for the ——— of ——— for the last year, are just and true to the best of my knowledge. ——— So help me God.

X. Allowance of the accounts.

October the ——— 1774.

T H E S E accounts were examined and allowed before

Y. Indictment for not repairing a common ancient highway.

Westmorland. *T H E jurors for our lord the king upon their oath present, That from the time whereof the memory of man is not to the contrary, there was and yet is a common and ancient king's highway leading from the town of ——— in the county of ——— towards and unto the market town of ——— in the county of ———, used for all the liege subjects of our said lord the king and of his predecessors with their horses, coaches, carts, and carriages to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway situate, lying and being in the parish of ——— in the county of ——— aforesaid, beginning at the place called ——— and so continued towards the market town of ——— aforesaid, for the length of ——— feet, and being of the breadth of ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same; so that the subjects of our said lord the king passing and travelling through the same with their horses, coaches, carts, and carriages, could not during the time aforesaid nor yet can go, return, pass, ride, and labour without great danger; to the great damage and common nuisance of all the liege subjects of our said lord the king passing through the way, and against the peace of our said lord the king, his crown and dignity; and that the inhabitants of the said parish of ——— in the said county of ——— the common highway aforesaid (as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.*

Or, that A. O. of ——— aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying, and being at ——— aforesaid, in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.

Indictment for not repairing an ancient horse and foot way.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from ——— in the county of ——— to ——— in the county of ——— for all the liege subjects of our said lord the king and his predecessors on horseback and on foot to go, return, pass, ride, labour and drive their cattle at their will, and that a certain part of the same common highway situate, lying and being within the parish of ——— in the county of ——— aforesaid, beginning at a place called ——— and so continued towards the said ——— of ——— in the county of ——— aforesaid, of the length of ——— feet and the breadth of ——— feet, on the ——— day of ——— in the ——— year of the reign of ———, and continually afterwards until the day of taking this inquisition at the parish of ——— aforesaid, in the county aforesaid, was and yet is very ruinous, miry, deep, broken, and in such decay for want of due reparation and amendment of the same that the liege subjects of our said lord the king by and through the same way with their horses and cattle could not during the time aforesaid nor yet can go, return, pass, ride, and labour, as they ought and were wont to do without great danger of themselves and of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king. And that the inhabitants of the same parish of ——— in the county aforesaid, the same common highway, so as aforesaid being in decay, ought to repair and amend when and so often as it shall be necessary.

Indictment for encroaching upon a highway, by building thereupon.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of ——— carrier, the ——— day of ——— in the ——— year ——— with force and arms, at ——— in and upon a common highway, a certain place commonly called ——— there leading from

—— to —— by a certain building there containing in length
 —— feet, and in breadth —— feet, by him the said A. O.
 erected and built, hath unlawfully and unjustly incroached, and
 doth yet incroach, and the building aforesaid, so as is aforesaid
 erected and built by him the said A. O. from the aforesaid
 —— day of —— in the year aforesaid unto the day of ex-
 hibiting this information, at —— aforesaid, in the county aforesaid,
 with force and arms unlawfully and unjustly hath continu-
 ned, and doth continue, by reason whereof the common high-
 way aforesaid hath become and is greatly straitened, so that the
 liege subjects of the said lord the king upon and through the same
 common highway aforesaid, with their horses, carts, and car-
 riages cannot go, pass, ride, and labour as they ought and were
 wont to do, to the great and common nuisance of all the liege sub-
 jects of the said lord the king in and through the said common
 highway going, passing, riding, and labouring, and against the
 peace of the said lord the king. Trem. 196.

Indictment for inclosing the highway.

Westmorland. **T**H E jurors for our said lord the king upon
 their oath present, That whereas from the
 time whereof the memory of man is not to the contrary, the liege
 subjects of our said lord the king had and lawfully used a certain
 common highway at —— in the said county, in a cer-
 tain place there called —— leading from the town of ——
 aforesaid, to the town of —— for themselves and their goods
 without any stoppage or hindrance by any ditches, hedges, or other
 obstacles whatsoever; nevertheless, one A. O. of —— aforesaid,
 in the county of —— aforesaid, yeoman, on the —— day
 of —— in the —— year of the reign of —— with force and
 arms at —— aforesaid, in the county of —— aforesaid, in
 the place aforesaid, called —— upon the common highway aforesaid,
 a certain ditch and quickset hedge, did make, and the said
 ditch and quickset hedge so as aforesaid made, doth yet continue and
 keep; to the great stoppage and hindrance of the liege subjects of
 our said lord the king passing in and through the said common
 highway, and against the peace of our said lord the king.

Indictment for laying timber or other obstructions in the highway.

Westmorland. **T**H E jurors for our lord the king upon their
 oath present, That A. O. late of —— in the
 county aforesaid, yeoman, on the —— day of —— in the
 —— year

— year of the reign of — and on divers other days and times as well before as afterwards, with force and arms, at — in the said county, in and upon the king's common highway there, leading from — unto the town of —, divers great pieces of timber put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed from the aforesaid — day of — in the — year aforesaid, until the day of exhibiting this information in and upon the king's common highway aforesaid to be, lie, and remain, hath permitted and doth still permit to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid going, passing, riding, and travelling, and against the peace of our said lord the king, his crown, and dignity. Trem. 197.

Or, — great quantity of dung and other filth, by reason whereof divers hurtful and unwholesome smells from the said dung and other filth did then and there arise, and thereby the air there became, was, and is corrupted and infected —

Or, — cart loads of rubbish — by reason whereof the said highway for the whole time aforesaid was straitened and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, through the said common highway there, as they ought and have been accustomed.

Indictment for stopping up a watercourse, whereby the highway is overflowed.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the king's common highway, within the said parish, leading from the town of — in the county aforesaid, towards and unto —, with gravel and other materials unlawfully and injuriously did obstruct and stop up: and the said watercourse, so as aforesaid obstructed and stopped up from the said — day of — in the year aforesaid until the day of the taking of this inquisition at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse on the same day and year and divers other days and times afterwards between that day and the day of the taking of this inquisition did overflow and remain in the king's common highway aforesaid, and thereby the same was and yet is greatly

greatly hurt and spoiled; so that the liege subjects of our said lord the king through the same way with their horses, coaches, carts, and carriages, then, and on the said other days and times could not nor yet can go, return, pass, ride, and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king.

(a) Notice for a vestry or other public meeting.

NOTICE is hereby given, That a vestry or public meeting will be held at _____ on the _____ day of _____ next in order to [here set forth the particular occasion.] Dated the _____ day of _____ 1774.

A. C. Constable, &c.

(b) Presentment by a justice of a road being out of repair.

Middlesex. **A**T the general quarter sessions of the peace of our lord the king, held for the said county, at _____ in the said county, on _____ the _____ day of _____ in the _____ year of the reign of _____ before _____ and _____ esquires, and others, their companions, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, J. P. esquire, one of the justices of our said lord the king, assigned for the purpose aforesaid, by virtue of an act made in the 13th year of the reign of his majesty king George the third "For the amendment and preservation of the highways," upon his own view [or, if it is upon the information of the surveyor, then say, upon information on oath to him given by A. S. surveyor of the highways for the _____ of _____ in the said county] doth present, That from the time whereof the memory of man is not to the contrary there was and yet is a certain common and ancient king's highway, leading from the town of _____ in the said county, towards and unto _____ within the same county, used for all the king's subjects with their horses, coaches, carts, and carriages to go, return, and pass at their will; and that a certain part of the same king's common highway, commonly called _____ situate, lying, and being in the _____ of _____ in the same county, containing in length _____ yards, and in breadth _____ feet, on the _____ day of _____ in the _____ year of the reign of _____ and continually afterwards until the present day was and yet is very ruinous,

ruinous, deep, broken and in great decay, for want of due reparation and amendment, so that the subjects of the king through the same way with their horses, coaches, carts and carriages could not during the time aforesaid, nor yet can go, return, or pass as they ought and were wont to do, to the great damage and common nuisance of all the king's subjects through the same highway going, returning, or passing, and against the peace of our said lord the king: And that the inhabitants of the ——— of ——— aforesaid, in the county aforesaid, the said common highway so in decay ought to repair and amend, when and so often as it shall be necessary. In testimony whereof the said J. P. to these presents hath set his hand and seal, this ——— day of ——— in the year aforesaid.

(c) Warrant of distress for an assessment.

Middlesex. To the Constable, &c.

WHEREAS by an assessment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments within the ——— of ——— in the said county, for the purposes of, &c. [as stated in the justice's order] pursuant to an order of justices for that purpose, according to the directions of the act passed in the thirteenth year of the reign of his majesty king George the third "For the amendment and preservation of the highways," A. O. was charged with the sum of ——— as his share and proportion of the said assessment, in respect of the lands, tenements, woods, tithes, and hereditaments, which he occupied within the said ———; and whereas it appears to me upon the oath of ——— that the said sum of ——— hath been duly demanded from the said A. O., and that he hath refused to pay the same for the space of ten days after such demand made: These are therefore in his majesty's name to command you to levy the said sum of ——— by distress of the goods and chattels of the said A. O. And if the same shall not be paid within the space of four days next after such distress by you taken, together with the reasonable charges of taking and keeping the same, that you do then sell the said goods and chattels so by you distrained; and out of the money arising by such sale that you do pay unto A. S. the surveyor of the highways for the said ——— of ——— the said sum of ——— to be employed for the purposes aforesaid; and that you do return the surplus thereof to the said A. O., the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O. whereon to levy the said sum of ——— that then you certify the same to me, together with this warrant. Given under my hand and seal the ——— day of ——— 1774.

(d) Information against an offender.

Middlesex. *BE it remembered, that on the ——— day of ——— 1774, A. I. of ——— in the said county, informeth and maketh oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that A. O. of ——— in the said county [Here describe the offence particularly, and follow the words of the act as near as may be,] contrary to the statute made in the thirteenth year of the reign of his majesty king George the third, "For the amendment and preservation of the highways," which hath imposed a forfeiture of ——— for the said offence.*

A. I.

Taken and sworn the ——— day of ——— before me. J. P.

If it is on the Turnpike act, then say, ——— contrary to the statute made in the thirteenth year of the reign of his majesty king George the third "For regulating the turnpike roads," &c.

If it is for default in performing statute duty, then in describing the offence, state the duty required, and the notice given for that purpose, and the neglect according to the fact, and as near to the words of the act as may be.]

(e) Summons of an offender.

Middlesex. To A. O. of ———

WHEREAS complaint and information hath been made upon oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, by A. I. of ——— That [Here state the nature and circumstances of the case, as far as it shall be necessary to shew the offence and to bring it within the authority of the justice, and in doing that follow the words of the act as near as may be,] These are therefore to require you personally to appear before me (or, the justices to be assembled at their special sessions to be holden (at ——— in the said county, on the ——— day of ——— next, at the hour of ——— in the ——— noon, to answer to the said complaint and information made by the said A. I. who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand and seal, this ——— day of ——— 1774.

(f) Form

(f) Form of a conviction.

Middlesex. *BE it remembered, that on the — day of — in the year of our Lord 1774, at — in the county aforesaid, A. I. came before me J. P. esquire, one of his majesty's justices of the peace of the said county, and informed me, that A. O. of — on the — day of — now last past, at — in the said county, did [Here set forth the fact in the manner described by the statute] Whereupon the said A. O. after being duly summoned to answer the said charge, appeared before me on the — day of — at — in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence: But the same being fully proved upon the oath of A. W. a credible witness, it manifestly appears to me the said justice that the said A. O. is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice that the said A. O. be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge that he the said A. O. hath forfeited the sum of — of lawful money of Great Britain for the offence aforesaid to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.*

If the party doth not appear upon the summons, then after the words being duly summoned to answer the said charge, insert, did not appear before me pursuant to the said summons; or did neglect and refuse to make any defence against the said charge, but the same being fully proved, &c.

If the party confesses the charge, then, after the words — contained in the said information, insert, acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, &c.

(g) Order for payment of a forfeiture.

Middlesex. *WHEREAS A. O. of — in the said — is duly convicted before me J. P. esquire, one of his majesty's justices of the peace for the said county, for that he the said A. O. [Here describe the offence as set forth in the information] whereby he the said A. O. hath forfeited the sum of — I do therefore hereby order the said A. O. to pay to A. S. Surve, or of the — the said sum of — to be by him disposed of as the law directs Given under my hand and seal the — day of — 1774.*

- (h) Warrant of distress for a forfeiture. (Not to be issued till after six days from service of the order for payment.)

Middlesex. To the constable of —

WHEREAS A. O. of — in the said county, yeoman is duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. hath [Here set forth the offence, describing it particularly in the words of the statute as near as may be] contrary to the statute in that case made and provided, by reason whereof the said A. O. hath forfeited the sum of — to be distributed as herein is mentioned which he hath refused to pay; These are therefore in his majesty's name to command you to levy the said sum of — by distress of the goods and chattels of him the said A. O. And if within the space of four days next after such distress by you taken, the said sum together with the reasonable charges of taking and keeping the same shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of — to A. I. of — who informed me of the said offence, and the other half of the said sum of — to A. S. the surveyor of the highways for the — of — where the said offence (neglect, or default,) happened, to be employed towards the repair of the said highway [or as the case shall be] returning the overplus upon demand to him the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O. whereon to levy the said sum of — that then you certify the same to me, together with this warrant. Given under my hand and seal the — day of — 1774.

If it is for a turnpike forfeiture, then say, — to A. S. surveyor of the turnpike road (describing it) — to be employed towards the repair of the said road —.

- (i) Constable's return of want of distress.

I A. C. constable of the — of — in the county of — do hereby certify and make oath that by virtue of this warrant I have made diligent search for the goods of the within named —, and that I can find no sufficient goods whereon to levy

levy the within sum of ———. As witness my hand the ———
day of ——— 1774. A. C.

Sworn before me the
day and year, &c. J. P.

(k) Commitment for want of distress.

Middlesex. { To the constable of ——— in the said county, and
to the keeper of the common gaol [or, house
of correction] at ——— in the said county.

WHEREAS A. O. of ——— in the said county, yeoman, was
on the ——— day of ——— convicted before me J. P. esquire,
one of his majesty's justices of the peace in and for the said county,
upon the oath of A. W. a credible witness, for that he the said
A. O. [Here set forth the offence] contrary to the statute
made in the thirteenth year of the reign of his majesty king
George the third "For the amendment and preservation of the
highways," [If it is a turnpike offence, then say, "For re-
gulating the turnpike roads,"] by reason whereof the said A. O.
hath forfeited the sum of ———; And whereas on the ———
day of ——— in the year aforesaid I did issue my warrant to
the constable of ——— to levy the said sum of ——— by distress and
sale of the goods and chattels of him the said A. O. and to distri-
bute the same according to the directions of the said statute; And
whereas it duly appears to me upon the oath of the said (con-
stable) that he the said ——— hath used his best endeavours to
levy the said sum on the goods and chattels of the said A. O. as
aforesaid, but that no sufficient distress can be had whereon to levy
the same; These are therefore to command you the said constable
of ——— aforesaid to apprehend the said A. O. and him safely
to convey to the common gaol [or, house of correction] at ———
in the said county, and there deliver him to the keeper thereof, to-
gether with this precept. And I do hereby also command you the
said keeper to receive and keep in your custody the said A. O. for
the space of three months, unless the said sum shall be sooner paid
pursuant to the said conviction and warrant; and for so doing
this shall be your sufficient warrant. Given under my hand and
seal the ——— day of ——— in the year of our Lord ———.

In case of a commitment for want of payment of money
due on an assessment, it must be ——— to receive and keep in
your custody, until he shall have paid the said sum of ——— and
the further sum of ——— being the costs and charges occasioned
by his neglect in paying the same.

(l) Notice of appeal.

A. B. take notice that I intend to appeal to the next general quarter sessions of the peace, to be holden for the county of ——— against an order [conviction, or other proceeding, as the case may be, particularly specifying the purport of such order, &c. and assigning the grievance and cause of complaint.] Dated the ——— day of ——— 1774.

C. D.

(m) Order of turnpike trustees for erecting a weighing engine.

AT a meeting of the trustees under an act passed in the ——— year of the reign of ——— for [Here recite the principal part of the title of the particular act] held at ——— the ——— day of ——— 1774.

In pursuance of the powers given to us by an act passed in the thirteenth year of the reign of his majesty king George the third "For regulating the turnpike roads." we do hereby order that an engine proper for the weighing of carriages of the construction and weights specified in the said act to be forthwith erected at or as near as conveniently may be to the toll gate or bar now erected upon the said turnpike road at ———, and that A. B. the treasurer, (clerk, or surveyor,) of the said turnpike road do contract with some proper person, (or, with C. D. in case the trustees shall think fit to name the person) for the making and erecting such engine, and do inspect and take care that the same is properly done. And we do order the gatekeeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when required, by the driver thereof, according to the directions of the said act; and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weights allowed by the said act, and account to us for the money received for all such overweight. Given under our hands ———.

(n) Allow-

(n) Allowance of an increased number of horses drawing up a steep hill.

AT a meeting of the trustees of a turnpike road, under an act passed in the ——— year of the reign of ——— for [Here state the principal part of the title of the act] held at ——— the ——— day of ——— 1744.

It appearing to us, upon the oath of ——— being a person experienced in levelling, that the rise of a part of a certain hill, upon the said turnpike road, lying in the parish of ——— called or known by the name of ———, between the post marked "Put on," and the post marked "Take off," being ——— yards in length, is above 4 inches in a yard; we do hereby allow to be drawn up the said hill, between the posts above-mentioned, waggons having poles or bottoms of the fellys of the wheels of the breadth of nine inches with ——— horses, and carts having the like wheels with ——— horses, and waggons having wheels of the breadth of six inches with ——— horses, and carts having the like wheels with ——— horses, and waggons having wheels of less breadth than six inches with ——— horses, carts having the like wheels with ——— horses.

If the whole rise be upon an average more than four inches in a yard, then say, ——— that the rise of a certain hill ——— is upon an average above four inches ———.

(o) Certificate thereof to the sessions.

I A.C. clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the ——— of ——— the general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees, for the purposes therein mentioned. Dated this ——— day of ——— 1774.

(p) Notice of contracting for materials.

NOTICE is hereby given that A. S. surveyor of the turnpike road lying between ——— and ——— will on the ——— day of ——— next, at the hour of ——— in the ——— noon, let the getting of ——— cart loads of gravel [or, ——— stone,] to be got at a pit at ——— for the use of the said turnpike road, and will also let the carriage of the said gravel [or stone] from the said pit to ——— where the same is to be used and employed upon the said turnpike road. And all persons desirous

siours of entering into a contract with the said surveyor, either for getting or carrying the said materials, are desired to attend at the time and place before-mentioned. Dated this ——— day of ——— 1774.

(q) Agreement with persons obliged to particular repairs.

A^T a meeting of the trustees of the turnpike roads under an act passed in the ——— year of the reign of ——— for [Here state the principal part of the title of the act] held at ——— the day of ——— 1774.

Whereas A. B. of ——— is liable by tenure [or as the case shall be] to the repair of a certain highway leading between ——— and ——— of the length of ——— yards or thereabouts, and the said highway being now made turnpike road by virtue of the said act will occasion a greater expence to make and keep the same in proper repair than would have been necessary if no such act had been obtained; and the said A. B. attending this meeting in person (or, by C. D. his attorney or agent authorized to treat in that behalf), the said trustees and the said A. B., &c. in pursuance of a power given by an act passed in the 13th year of the reign of king George the third, "For regulating turnpike roads," have, in order to put and keep the said road in proper condition and repair, come to the following agreement, viz. That the said trustees shall, on or before the ——— day of ——— next, pay and allow the sum of ——— out of the tolls arising upon the said turnpike roads, towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road; and that the said A. B. shall advance and pay into the hands of the treasurer of the said turnpike road, on or before the ——— day of ——— next, the sum of ——— to be also laid out and expended by the said surveyor in the repair of the said road; and that from and after the ——— day of ——— that the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said turnpike act shall continue, upon the said A. B. paying into the hands of their treasurer the sum of ——— upon the ——— day of ——— every year, which the said A. B. doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be repaired by the said trustees as aforesaid.

Or the same precedent may be varied according to circumstances.

(r) Order for the repair of a new highway.

Middlesex. *WE*, two of his majesty's justices of the peace for the said county, acting within the (hundred) of _____ in the said county, having, (at the request of the parties interested in the repair of part of the highway, [or,] turnpike road hereafter mentioned, who could not agree about the repair thereof) viewed a certain part of the highway (or, turnpike road) described in the plan hereunto annexed of the length of _____ yards, which hath been set out and appropriated for a new highway (or, turnpike road) between _____ and _____ in lieu of an old highway (or, turnpike road) which hath been ordered to be stopped up; and having also viewed the ground where the said old highway was situated, and having summoned the surveyor of the said new highway, (or, turnpike road) and also A. B. who was liable by tenure, &c. [If the old road laid in a different parish, and was to be repaired by the inhabitants, then say,] and also the surveyor of the parish of _____ where the said old road lay, who were liable to the repair of the said old highway (or, turnpike road) to appear before us this day; and having heard what has been alleged touching the repair of the said part of the said highway (or, turnpike road), and having fully considered the same, and all the circumstances of the case; We think it just and reasonable, and do hereby order and adjudge, that the said A. B. (or, the inhabitants of the said parish, &c.) shall from time to time repair, and keep in repair, the whole (or, a part) of the said highway, from _____ to _____ containing _____ yards in length, at each end whereof we have caused a post or stone to be placed, to ascertain the extent thereof. Given under our hands and seals this _____ day of _____ 1774.

If it be agreed by the consent of parties, to pay a sum in pounds in lieu of such repairs, then, after the word adjudge, insert, by and with the consent, of the said A. B. signified by his subscribing his name to this order (or, by the consent of the inhabitants of the said parish of _____ signified in writing at a vestry or other public meeting, a copy whereof is here underwritten) that the said A. B. (or, the inhabitants _____) is (or, are) liable to repair part of the said new highway; and that if he (or, they) shall, on or before the _____ day of _____ next, pay to the surveyors of the highways of the said parish of _____ [if it is not turnpike road, but if it be turnpike road, then say, to the treasurer of the said turnpike road] the sum of _____ the said A. B. and his heirs, (or, the said inhabitants and their successors) shall be for ever acquitted and discharged from the burden and obligation to repair the said new highway or any part thereof.

(s) Agree-

- (s) Agreement of the inhabitants to pay a gross sum to be discharged from the repair of a particular road.

WE whose names are subscribed, being a majority of the inhabitants of the — of — assembled this — day of — at a vestry or public meeting held pursuant to notice duly given, for the purposes of consulting about an agreement to be made concerning the repair of part of a highway, (or, turnpike road) within the said — of —, do consent and agree to pay the sum of — to be absolutely exonerated and discharged from all future repairs of the said highway (or, turnpike road.) — If an annual payment be agreed upon, then say, to pay annually the sum of —.

- (t) Order for transferring statute turnpike duty to other roads.

Middlesex. *AT a special sessions held by justices of the peace for the said county, acting in the hundred of — within the said county, at — on the — day of — 1774.*

Whereas application and complaint upon oath hath been made unto us by A. B. surveyor of the (parish, &c.) of — that the several highways, not being turnpike, within the said — are very extensive and in bad repair, and that a considerable part of the statute duty arising within the said — hath been called forth, and required to be applied in the repair of certain turnpike roads lying within the said — which are in good condition, and have a considerable revenue for their support, arising from the tolls collected thereupon; and we having duly summoned C. D. the surveyor of the said turnpike road to appear before us, to shew cause why the said statute duty, called forth and applied by him to the repair of the said turnpike road, should not be withdrawn therefrom, and applied to the repair of the other highways within the said —; and upon hearing the said C. D. and receiving an account of the revenues and debts of the said turnpike road, and of the state and condition of the repair of the said turnpike road and highway respectively; and in appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said — for the repair of the said turnpike road may be conveniently dispensed with, without endangering the securities for the money advanced upon the credit of the tolls thereof; and that such statute duty is wanted for the repairs of the other highways within the said

_____ ; we, in pursuance of the power given to us by the act passed in the thirteenth year of the reign of king George the third, "For regulating turnpike roads," do order that from and after the _____ day of _____ next there shall be only _____ days statute duty performed by the inhabitants of the said _____ upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways with the said _____.

(u) Notice for letting tolls.

NOTICE is hereby given that the tolls arising at the toll-gate upon the turnpike road at _____ called or known by the name of the _____ gate, will be let by auction to the best bidder, at the house of _____ at _____ on the _____ day of _____ next, between the hours of _____ and _____ in the manner directed by the act passed in the thirteenth year of the reign of his majesty king George the third, "For regulating the turnpike roads;" which tolls produced the last year the sum of _____ above the expences of collecting them, and will be put up at that sum. Whoever happens to be the best bidder must at the same time give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for the payment of the rent agreed for, and at such times as they shall direct.

A. C. clerk to the trustees of
the said turnpike road.

Highwaymen. See Robbery.

Homicide.

HOMICIDE in law signifies the killing of a man by a man. 1 Haw. c. 26. s. 2.

And it includes in it not only petit treason, concerning which title see Treason, but also the several offences which are treated of in the following sections.

There is also another kind of untimely death of a man, not properly homicide: When he is killed by a horse, a cart, a tree, or the like, and not by a man, which is called casual death; for which see title Drownd.

Sect. I. *Justifiable homicide.*

[24 H. 8. c. 5.]

II. *Homicide by misadventure.*III. *Homicide by self-defence.*IV. *Manslaughter.*

[43 G. 3. c. 58. f. 1.]

V. *Murder.*

[3 H. 7. c. 1. — 2 & 3 Ed. 6. c. 24. f. 2. 4.
— 2 G. 2. c. 21. — 22 G. 2. c. 33. art. 28. —
25 G. 2. c. 37.]

VI. *Self-murder.*I. *Justifiable homicide.*

On a real necessity.

To make homicide justifiable, it must be owing to some avoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 *Haw. c. 28. f. 1.*

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. *Id. f. 2.*

Killing robbers and burglars.

If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen in such felonious intent to be slain, the slayer shall forfeit no lands or goods, and shall for the same be fully acquitted and discharged. 24 H. 8. c. 5.

Trespassers in Parks.

If trespassers in a forest, chase, park, or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers, upon a hue and cry made to stand to the king's peace, but fly from or defend themselves against them, they may be slain by them. 1 *Haw. c. 28. f. 15.*

Rioters.

If rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant, and any of them be slain; it is no felony. *Hale's Pl. 37.*

House burners.

If a man come to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. *Id. 39.*

Ravishers.

If a woman kill him that assaulteth to ravish her; it is no felony. *Id.*

Felons refusing to be arrested.

If a person having actually committed a felony will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him; whether private persons or public officers with or without a warrant from a magistrate, he may be lawfully slain by them. 1 *Haw. c. 28. f. 11.*

So if a felony hath actually been committed, and an officer or minister of justice having lawful warrant so to do arrest an innocent person, and such person assault the officer or minister of justice, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him; it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party who so assaulted or offered to fly away, and is killed, shall forfeit his goods. 3 *Inst.* 56.

Suspected felon refusing to be arrested.

Also if a person arrested for felony break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case likewise, there must have been a felony actually committed. *Hale's Pl.* 36, 37.

Felon escaping.

Also if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the fray. *1 Hawk. c.* 28. *f.* 13.

Felon breaking gaol.

In civil causes; although the sheriff cannot kill a man who flies from the execution of a civil process, yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the assailant. *Hale's Pl.* 37.

Resisting a civil process.

So if in the arrest and striving together the officer kill him, it is no felony. *Id.*

In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed, without any forfeiture, or pardon purchased. *Id.* 38.

Trial and discharge.

It is important that in all cases where an arrest is made by virtue of a warrant, the warrant (if demanded, at least,) should be produced; because if homicide ensue, the legality of the warrant enters materially into the merits of the question. 8 *T. R.* 188.

Warrant to arrest should be shown.

II. Homicide by misadventure.

I have purposely avoided the word *chancemedly* in this place, because authors do not seem to be agreed whether it is to be applied to homicide by *misadventure*, or to *manslaughter*. L. Coke and Mr. Hawkins seem to understand it of *manslaughter*; L. Hale, and others, of homicide by *misadventure*. The original meaning of the word seems to favour the former opinion, as it signifies a sudden or casual meddling or contention, whereas homicide by *misadventure* supposeth no previous meddling or falling out. But the same author sometimes in different places applies it to both of them promiscuously.

Chancemedly.

What is homicide by misadventure.

Cases of homicide by misadventure.

Homicide by misadventure is, where a man is doing a lawful act, without intent to hurt another, and death casually ensues. *Hale's Pl.* 31.

As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. *1 Haw. c. 29. s. 3.*

But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. *1 H. H. 476.*

If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child, and yet drive on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run across the way, and the cart run over the child before it was possible for the carter to make a stop, it is by misadventure. *Id.*

So where workmen throw stones, rubbish, or other things from an house, in the ordinary course of their business, by which a person underneath happens to be killed; if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution, it will amount to manslaughter at least; it was a lawful act, but done in an improper manner. It is said by some, that if this be done in the streets of *London*, or other populous towns, it will be manslaughter notwithstanding the caution above-mentioned. But this will admit of some limitation. If it be done early in the morning, when few or no people are stirring, and the ordinary caution is used, it seemeth that the party is excusable. But when the streets are full, that will not suffice; for in the hurry and noise of a crowded street, few people hear the warning, or sufficiently attend to it. *Foss. 262, 263.*

It is said before that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. And if a person meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of

his arrow, this had been homicide by misadventure, and no felony. 3 *Inst.* 56.

So if any shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl. But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man, if his intention were to steal the poultry (which must be collected from circumstances,) it will be murder by reason of that felonious intent; but if it were done wantonly and without that intention, it will be barely manslaughter. *Fo&t.* 258, 9.

The rule before laid down supposeth that the act, from which death ensued, was *malum in se*. For if it were barely *malum prohibitum*, as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose, the case of a person so offending will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsic moment. *Fo&t.* 259.

Further, if there be an evil intent, though that intent extendeth not to death, it is murder. Thus; if a man, knowing that many people are in the street, throw a stone over a wall, intending only to frighten them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. 3 *Inst.* 57.

If there be an evil intent, it is murder.

And it is a general rule in case of all felonies that where-ever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

But in all the cases above, if it doth only hurt a man by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages; for though the chance excuse from felony, yet it excuseth not from trespass. 1 *H. H.* 472.

If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inst.* 149.

Escape.

This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 *Haw. c.* 29. *f.* 11.

This kind of homicide no felony.

But yet a person guilty thereof is notailable by justices of the peace, but must be committed to the affizes. *Id. f.* 23.

Bail.

But if he be taken only on a slight suspicion, the justices of the peace may bail him, 2 *Haw. c.* 15. *f.* 62.

Forfeiture.

Although this homicide is not properly a man's crime, but his misfortune, yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence, and circumspection, in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have out of the chancery of course. 1 H. H. 477. 492.

But the practice now is to direct an acquittal, without obliging the prisoner, by a special proceeding, to purchase his pardon under the stat. of Gloucester, and no forfeiture is incurred.

III. Homicide by self-defence.

Se defendendo,
what.

Homicide in a man's own defence seems to be, where one, who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 1 Haw. c. 29. f. 13.

Cases of se
defendendo.

And not only he, who upon an assault retreats to a wall, or some such strait, beyond which he can go no farther before he kills the other, is judged by the law to act upon unavoidable necessity, but also he, who being assaulted in such a manner and in such a place that he cannot go back without manifestly endangering his life, kills the other without retreating at all. *Ib.* f. 14.

And notwithstanding a person, who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. *Id.*

But if the mortal wound were first given, then it is manslaughter. *Hale's Pl.* 42.

And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. 1 Haw. c. 29. f. 16.

But if a person upon malice *prepenſe* strike another, and then fly to the wall, and there in his own defence kill the other, this is murder. *Hale's Pl.* 42.

Accessaries.

Hereof there can be no accessaries either before or after the fact, because it is not done with a felonious intent, but upon inevitable necessity. 3 *Inst.* 56.

If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 *Inst.* 315. Escape.

A person guilty hereof is not bailable by justices of the peace; but they must commit him till the assizes. 1 *Haw.* c. 29. f. 23. Bail.

But otherwise it is, if he be taken only on a slight suspicion. 2 *Haw.* c. 15. f. 62. Power of justices of the peace.

L. Coke (2 *Inst.* 316.) says, that the justices of the peace cannot take an indictment of killing a man *se defendendo*; because their commission is not general, as is that of the justices of gaol delivery, but limited. But L. Hale (2 *H. H.* 46.) holds the contrary.

A person convicted hereof shall not be discharged out of prison but upon bail, and shall forfeit all his goods, although the cause were inevitable: And this because of the great regard which the law hath for the life of man; and also by reason that the law intends it had a beginning upon an unlawful cause; for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides. But he shall have his pardon out of the chancery of course. 3 *Inst.* 56. 1 *Haw.* c. 29. f. 25. Forfeiture.

The practice, however, is now to direct the jury to acquit the prisoner generally; without obliging him by a special finding, to purchase his pardon under the stat. of *Gloucester*, c. 9. and no forfeiture is incurred.

If a man be indicted for homicide *se defendendo*, and is found not guilty, yet if it be found that he fled for the same, he shall forfeit his goods for such flight, in not standing to the law of the land. 1 *H. H.* 493. Flight.

IV. Manslaughter.

By manslaughter is to be understood such killing of a man as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 *Haw.* c. 30. f. 1. Manslaughter, what.

There is no difference between murder and manslaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. 3 *Inst.* 55. Without malice.

There can be no accessaries to this offence before the fact, because it must be done without premeditation. 1 *Haw.* c. 30. f. 2. Accessaries.

But there may be accessaries after the fact. 3 *Inst.* 55.

Bail.

This offence is not bailable by justices of the peace.

3 *Ed. I. c. 15.*

Clergy.

It is within the benefit of clergy; but the offender shall forfeit as in other felonies. 2 *H. H.* 344.

Stabbing.

But there is one kind of manslaughter, which by the statute of the 1 *J. c. 8.* is excluded the benefit of clergy; *viz.* He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person so stabbed or thrust shall die thereof in six months, although it cannot be proved that the same was done of malice forethought, shall be guilty of felony without benefit of clergy.

[Now by stat. 43 *G. 3. c. 58.* If any person shall after 1st July 1803, wilfully, maliciously, and unlawfully shoot at any of his majesty's subjects; or wilfully, maliciously, and unlawfully present, point, or level any kind of loaded fire arms at any of his majesty's subjects, and attempt by drawing a trigger or in any other manner to discharge the same at or against his person; or shall wilfully, maliciously, and unlawfully, stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure, or disable such person, or with intent to do him some other grievous bodily harm, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for any offences for which he or they may respectively be liable by law to be apprehended, imprisoned, or detained; in every such case the person so offending, his counsellors, aiders, and abettors, shall suffer death as in cases of felony without benefit of clergy.

Provided, that if it shall appear at the trial that such acts of stabbing or cutting were committed under such circumstances as that if death had ensued therefrom the same would not in law have amounted to murder, then the person so indicted shall be acquitted. *f. 1.*

V. Murder.

Murder, what.

Murder is, when a man of sound memory, and of the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law; so that the party wounded or hurt die of the wound or hurt, within a year and a day. 3 *Inst.* 47.

Malice expressed.

By *malice expressed*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorized. 1 *H. H.* 451.

And

And the evidences of such a malice must arise from external circumstances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like, which are various, according to variety of circumstances. *Id.*

Malice implied is in several cases; as when one voluntarily kills another without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 1 *H. H.* 455, 456. Poisoning also implies malice, because it is an act of deliberation. 1 *H. H.* 455.

Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

Also where a prisoner dies by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 *Inst.* 52.

And in general, any formed design of doing mischief may be called malice, and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice *prepenſe*, and consequently murder. 2 *Harv. c.* 31. *f.* 18. 2 *Str.* 766.

For when the law makes use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense to which the modern use of the word *malice* is apt to lead one, a *principle of malevolence to particulars*; for the law by the term *malice (malitia)* in this instance meaneth, that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked heart, regardless of social duty, and fatally bent upon mischief. *Fost.* 256, 7.

And wherever it appears that a man killed another it shall be intended *primâ facie* that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, or the like. 1 *Harv. c.* 31. *f.* 32.

Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. *Ib.* *f.* 38.

And it seems to be agreed that no breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an af-

fault, whether the person slain did at all fight in his defence or not. *Ib. f. 33.*

Person killed by passion, grief, or fear.

If a man by harsh and unkind usage put another into such a passion of grief or fear, that the party either die suddenly, or contract some disease whereof he dies, though this may be murder or manslaughter in the sight of God, yet, in a human judicature, it cannot come under the judgment of felony, because no external act of violence was offered whereof the law can take notice. *1 H. H. 429.*

Duelling after a sudden quarrel.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon and go into the field and therein fight, and the one killeth the other, this is no malice prepensed; for the fetching of the weapon and going into the field is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they met the next day, nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time of deliberation, then it is murder. *3 Inst. 51. 1 H. H. 453.*

Duelling in cold blood.

And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other but also his seconds are guilty of murder, whether they fought or not. And it is holden that the seconds of the party slain are likewise guilty as accessaries. *1 Haw. c. 31. f. 31.*

Physician giving a potion which causes death.

If a physician or surgeon give a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and contrary to the physician's or surgeon's expectation it kills him, this is not homicide. And *L. Hale* says, he holds their opinion to be erroneous, who think that if he be no licensed surgeon or physician that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant people not to be too busy in this kind of tampering with physic, but are no safe rule for a judge or jury to go by. *1 H. H. 429.*

Giving a potion to cause abortion.

But if a woman be with child, and any give her a potion to destroy the child within her, and she take it and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother, it is murder. *1 H. H. 430.*

Per. 2. 496 b. c.
Ch 27. 2a 13. 12

And by *43 G. 3. c. 58.* wilfully, maliciously, and unlawfully to administer to, or cause to be administered to any of his majesty's subjects, any deadly poison or other noxious or destructive substance or thing, with intent such person thereby to murder, or thereby to cause and procure miscarriage of any woman then being quick with child, is felony

without clergy. And to administer any medicines to procure the miscarriage of any woman not quick with child is felony; and the offender may be fined, imprisoned, set in the pillory, publicly or privately whipped, or suffer one or more of those punishments, or be transported for 14 years.

f. 2. 127. 1000

Also if a woman be quick with child, and by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body; and she is delivered of a dead child, this is great misprision, but no murder; but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 Inst. 50.

L. Hale says, that in this case it cannot legally be known whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. 1 H. H. 443. And Mr. Dalton says, whether it die within her body or shortly after her delivery, it maketh no difference. Dalt. 332. But Mr. Hawkins says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 Haw. c. 31. f. 16.

It seems agreed that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an accessory to the murder. Ib. f. 17.

Counselling a woman to kill her child.

L. Hale says, if a man have a beast, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it.

Keeping unruly cattle.

If he have no particular notice that it did any such thing before, yet if it is *feræ nature*, as a lion, a bear, a wolf, yea, an ape, or a monkey, if it get loose and do harm to any person, the owner is liable to an action for the damage.

If he have notice of the quality of any such his beast, and use all due diligence to keep him up, and yet he breaks loose and kills a man, this is no felony in the owner, but the beast is a deodand.

But if he did not use that due diligence, but through negligence the beast goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manslaughter in the owner.

But if he did purposely let him loose or wander abroad, with design to do mischief, nay though it were with design only to fright people and make sport, and it kills a man, it is murder in the owner. 1 H. H. 431.

They

Persons present
when murder is
committed.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53.

Escape.

If a murder be committed in the day time in a town not inclosed, and the murderer escape, the township shall be amerced: but if inclosed, whether the murder be in the night or day, the town shall be amerced. *Id.*

Where the
stroke is in one
county and the
death in another.

Where any person shall be feloniously stricken or poisoned in one county and die in another county, the offender may be indicted in the county where the party dies, before the coroner, justices of the peace, or other justices. 2 & 3 *Ed.* 6.

See mag. lib. acc. 108

c. 24. *f.* 2.

Where the prin-
cipal committeth
the offence in
one county, and
the accessory in
another.

Where a murder is committed in one county, and a person is accessory in another county, he may be indicted in the county where he was accessory, on certificate of the conviction of the principal in the county where he committed the murder. *f.* 4.

Where the
stroke is in
England, and
the death out of
England; and
vice versa.

If any person be feloniously stricken or poisoned upon the sea, or out of *England*, and shall die of the same in *England*; or shall be feloniously stricken or poisoned in *England*, and shall die of the same on the sea or out of *England*; the offenders and accessories may be indicted in the county where any such death stroke or poisoning shall happen, before the coroner, justices of the peace, or other justices; and the judges of assize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. 2 *G.* 2. *c.* 21.

Trial, when.

If a man be slain or murdered, and the slayers, murderers, and accessories be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they shall not be suffered to go at large, but be committed or bailed till the year and day be past; and an appeal may be brought, notwithstanding such acquittal or indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1.

Judgment.

Sentence in case of murder shall be pronounced in open court immediately after conviction, unless the court shall see reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also the time appointed for execution, and the marks of infamy hereby directed for such offenders. 25 *G.* 2. *c.* 37. *f.* 3.

How to be de-
meaned after
judgment.

And after conviction and judgment the gaoler shall confine the prisoner to some cell, or other proper and safe place in the prison, apart from the other prisoners; and no person, except the gaoler or his servants, shall have access to him without a license under the hand of the judge, sheriff, or under sheriff. But if the judge shall see cause to respite the

the execution, he may during the time of such stay relax or release by license under his hand any or all of the restraints or regulations before directed to be observed by the gaoler. *f. 6, 7.*

After sentence, and until execution, the offender shall be fed with bread and water only (except in case of receiving the sacrament, or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer necessaries, his name and place of abode being first entered in the books of such prison). And if the gaoler shall offend against or neglect to put in execution any of the said directions, he shall forfeit his office, and be fined 20*l.* and imprisoned till paid. *f. 3.*

The execution of persons found guilty of wilful murder shall be on the day next but one after sentence passed, unless it be *Sunday*, and in that case on the *Monday* following. *f. 1.* Execution.

But if there shall appear reasonable cause, the judge after sentence pronounced may stay the execution at his discretion. *f. 4.*

And if any person shall by force set at liberty or rescue or attempt to set at liberty or rescue any person out of prison committed for or found guilty of murder, or rescue or attempt to rescue any such person going to or during execution, he shall be guilty of felony without benefit of clergy. *f. 9.* Rescue.

The body, if in *London* or *Middlesex*, shall be immediately conveyed by the sheriff to the surgeons' hall, or such other place as the surgeons' company shall appoint, to be by them dissected and anatomized; and if elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid. *f. 2.* Body not to be buried.

And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after the same shall have been dissected and anatomized. *f. 5.*

At a meeting of the judges to consider of this act, there was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act the judgment for dissection and anatomizing only should be part of the sentence; and if it should be thought adviseable, the judge might afterwards direct the hanging in chains by special order to the sheriff, pursuant to the power given by this clause. *Fest. 107.*

Rescuing the
body.

And if after execution, any person shall by force rescue or attempt to rescue the body; he shall be guilty of felony, and transported for seven years. 25 G. 2. c. 37. s. 10.

How far the ac-
cessary shall have
his clergy.

The principal in murder is ousted of clergy in all cases, and the accessory before is also ousted of clergy in all cases, but the accessory after is in no case ousted of clergy. 2 H. H. 344.

All murders committed by any person in the fleet shall be punished with death, by the sentence of a court martial. 22 G. 2. c. 33. art. 28.

VI. Self-murder.

Felo de se.

A *felo de se*, or felon of himself, is a person, who being of sound mind and of the age of discretion, voluntarily killeth himself. 3 Inst. 54. 1 H. H. 411.

Year and day.

If a man give himself a wound, intending to be *felo de se*, and dieth not within a year and day after the wound, he is not *felo de se*. 3 Inst. 54.

Non compos.

Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance, that of a mother murdering her child, which is also against nature and reason; and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 *Haw. c. 27. s. 3.*

And L. *Hale* says, it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantic, or destitute of the use of reason, which will denominate him *non compos*. 1 H. H. 412.

Forfeiture.

The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law. 3 Inst. 54.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to enquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies;

lonies ; and a presentment thereof found before them
titles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt.*
144.

But nevertheless, the forfeiture shall relate to the time of
the wound given, and not to the time of the death, or of the
acquisition. 3 *Inst.* 55. *Dalt.* c. 144. 1 *Hale's Pl.* 29.
Haw. c. 27. s. 10.

But L. *Hale*, in his History of the Pleas of the Crown,
seemeth to doubt whether it shall not relate to the time of
the death only, and not the time of the wound given.
H. H. 414.

Nor doth the offence work any corruption of blood, or
loss of dower. 1 *Haw.* c. 27. s. 8. Corruption of
blood.

By the rubrick in the book of common prayer, before the
burial office (confirmed by act of parliament, 13 & 14 C. 2.
4.) a person who hath laid violent hands upon himself shall
not have that office used at his interment. Burial.

But he shall be buried ignominiously in the highway,
with a stake driven through his body. 4 *Black.* 190.

Hops. See **Citise.**

Horses.

For the duties on horses travelling post ; see title
Post.

ect. I. Stealing horses.

[1 Ed. 6. c. 12. s. 10. — 2 & 3 Ed. 6. c. 33.]

II. Buying stolen horses.

[2 & 3 Ph. & M. c. 7. — 31 El. c. 12.]

III. Killing or maiming horses.

IV. Regulations for slaughtering horses.

[26 G. 3. c. 71.]

V. Putting stoned horses on commons.

[32 H. 8. c. 13. — 18 El. c. 8. s. 3. — 21 J. c. 28.
s. 12.]

VI. Putting scabbed horses on commons.

[32 H. 8. c. 13. s. 9.]

I. Stealing

I. *Stealing horses.*

BY the 1 *Ed. 6. c. 12. f. 10.* No person or persons convicted for feloniously stealing (A) horses, geldings, or mares, shall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed. 6. c. 33.* Whereas there hath been some doubt upon the foregoing clause, whether a person convicted for feloniously stealing one horse, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and singular person and persons feloniously taking or stealing any horse, gelding, or mare, shall not be admitted to enjoy the privilege of clergy, but shall be put from the same.

The reason of which doubt is obvious; because a penal statute (and especially where life is concerned) ought not to be extended beyond the express words thereof, but to be taken strictly in favour of the subject.

If they be stolen out of the stable or other curtilage of the dwelling-house in the night time, it falls under the denomination of *Burglary*; (B) if in the day time, it falls under the denomination of *Larceny from the house*: And in either case, there is a reward of 40l. for convicting an offender, and an exemption from offices; as is set forth at large under the respective titles of *Burglary* and *Larceny*.

II. *Buying stolen horses.*

By the 2 & 3 *P. & M. c. 7.* and 31 *El. c. 12.* it is enacted as follows;

Horse fair.

The keeper of every fair and market shall yearly appoint a certain special and open place, where horses shall be sold in any fair or market overt;

Toll taker.

And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sun-set;

Horse to be
shewd one hour.

And the sale or exchange in any fair or market overt of any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing for one hour together at least, between ten of the clock at sun-set, in the open place of the fair or market, wherein horses are commonly used to be sold, and not within any house, yard, backside, or other privy or secret place;

Seller and buyer
to go to the toll
taker.

Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll taker, or for the book-keeper where no toll is due;

No

Nor unless such toll taker there, or (where no toll is paid) the book-keeper or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname, and place of abode, and shall enter all the same his knowledge in a book to be kept for that purpose, or else that the seller shall bring to the toll taker or other officer aforesaid, one credible person, that shall testify that he knoweth the seller, and his true name, surname, mystery, and dwelling place, and there enter the same, and also the name, surname, mystery, and dwelling place of him that so avoucheth his knowlege;

Sale to be entered.

Nor unless he also cause to be entered the very true price;

And the price.

And also the colour, and one special mark at least;

And marks.

And also the buyer to pay the toll, if any is due; if not, then to give 1d. for the entry.

Toll to be paid.

Which done the person entering the same shall give to the buyer requiring and paying 2d. for the same a note in writing of all the contents of such entry subscribed with his hand.

Certificate of entry.

Every person offending in any of the premises shall forfeit 5l. half to the king, and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action of detinue or replevin for the same.

Penalties.

And if any horse shall be stolen, and after shall be sold in open fair or market, and the sale shall be used in all points as aforesaid, yet nevertheless such sale in six months after the felony done shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 40 days next ensuing by two witnesses that the property of such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear before such magistrate that he paid for the same.

Owner may claim his horse within six months, and afterwards by paying what he cost.

III. *Killing or maiming horses.*

[For this part of the subject; see title "*Cattle.*"]

Killing.

IV. *Regulations for slaughtering horses.*

By 26 G. 3. c. 71. Every person who shall keep or use any house or place for the purpose of slaughtering any horse, mare,

License to be taken at the sessions.

mare, gelding, colt, filly, afs, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, *which shall not be killed for butcher's meat*, shall take out a license at the quarter sessions, which shall be signed by the justices at such sessions, upon a certificate under the hands and seals of the minister and churchwardens or overseers, or of such minister and two substantial householders of the parish wherein such person shall dwell, that he is fit and proper to be trusted with the carrying on such business. And if such licensed person shall die, his widow or personal representative may carry on the said business until the next sessions. *f. 1.*

Book to be kept.

The licence shall be signed by the major part of the justices, and a copy of the license shall be entered in a book to be kept by the clerk of the peace for that purpose; which book any person may inspect, and make extracts therefrom, between the hours of ten and twelve in the forenoon, (*Sundays excepted*;) paying for the same 6d. *f. 2.*

Certain words to be put up.

Every person so licensed shall cause his *name* and the words *Licensed for slaughtering horses pursuant to an act passed in the 26th year of his majesty king George the third*, to be painted or fixed over the door or gate of the house or place where he shall carry on the said business, in large and legible characters. *Id.*

Inspectors to be appointed, and their names put up.

And such parishioners as by law are intitled to meet in vestry to choose parish officers shall annually or oftener appoint one or more persons to inspect every such slaughtering house; and the inspector shall cause his *name*, and the words *Inspector of houses and places for slaughtering horses*, to be put up over his door where he resides. *f. 5.*

Inspector's duty.

Every such licensed person shall give six hours' notice in writing to such inspector, previous to his killing any such horse, &c. or other cattle, and previous to the slaying any such brought dead to such slaughtering house, to the intent that the inspector may attend and take an account and description of the height, age, colour, and marks of every such horse, mare, gelding, foal or filly, afs, or mule; and the colour and marks of every cow, &c. brought alive to be killed, or brought dead as aforesaid; and the same shall not be killed or slayed but between the hours of eight in the morning and four in the evening, between the last of *Sept.* and the first of *April*, and six in the morning and eight in the evening, between the last of *March* and the first of *Oct.* yearly. The inspector shall keep a book and enter such description therein, and every person carrying on such business shall pay 6d. for every entry; and all persons may have access to such book between the hours of eight in the morning and five in the evening, from the 1st of *Oct.* to the last of *March*, and between six in the morning and eight in the evening.

the evening during the other six months, paying 6d. for every inspection. If the inspector shall have reason to believe that any horse, &c. is free from disease, and in a sound and serviceable state, or hath been stolen, or unlawfully come by, he may prohibit the slaughtering thereof, for any time not exceeding eight days, and in the mean time shall advertise the same twice or more in some newspaper circulated in the county where such slaughterhouse is situate, unless the owner shall sooner claim the same, or certify to the inspector that he sent the same to be slaughtered; the expense of advertising to be paid by the occupier of such slaughterhouse; and if he shall refuse to pay the same, and shall be convicted (C) thereof on the oath of the inspector before one justice, he shall forfeit double the amount thereof, to be levied by distress and sale. *f. 3. 5.*

Every such book kept by the inspector shall be produced at every quarter sessions, and delivered to the justices here assembled to be by them examined. *f. 12.*

Every inspector may by day or night, (but if in the night in the presence of a constable) inspect any house or place kept for such purpose by any such licensed person, and also any stable, building, shed, yard, or place belonging thereto, and may search if any horse, &c. is deposited there, and shall make an account thereof. *f. 6.*

Inspectors may search slaughterhouses, &c.

And if any person who shall bring, or offer to sale, or shall bring any horse, &c. or other cattle as aforesaid, to any such licensed person to be slaughtered or killed, and shall refuse to give a satisfactory account of himself, or of the means by which the same came into his possession; or if there shall be reason to suspect that the same hath been stolen or unlawfully obtained; the said person to whom the same shall be brought or offered to sale, and also the said inspector, may seize and detain such person and horse, &c., and deliver such person to a constable, or peace officer, who shall convey him before a justice; and if the justice shall upon examination have cause to suspect that such horse, &c. hath been stolen or unlawfully obtained, he may commit such person into safe custody for any time not exceeding six days, in order to be further examined; and if the justice shall have reason to believe that such horse, &c. hath been stolen or illegally obtained, he shall commit such person to the common gaol or house of correction where the offence was committed, to be dealt with according to law. *f. 7.*

Persons bringing cattle, &c. refusing to give an account of themselves, may be carried before a justice.

Every such licensed person shall make entry in a book to be kept for that purpose of the name, profession, and place of abode, of the owner of every horse, &c. brought to be killed or slayed, and also of the person who shall bring the same, and the reason why brought; which book shall at all

An account to be kept of persons bringing cattle to be slaughtered.

times be open for the perusal of the inspector; and such person shall attend with and produce the said book before any justice for the place where such slaughterhouse is situate, when required by an order or warrant, and shall likewise produce the same at every quarter sessions. *§. 4.*

Making false entries.

If any such licensed person shall make any false entry in such book, and shall be convicted (D) thereof on the oath of two witnesses before one justice, he shall forfeit not exceeding 20*l.* nor less than 10*l.* by distress and sale, rendering the surplus, half to the informer, and half to the poor of the parish where such offender shall reside; and in case he shall not have effects to the amount of the penalty, such justice shall after sale and application as aforesaid, of such effects as shall be found, commit him to the house of correction, there to be confined to hard labour for any time not exceeding three months, nor less than one month. *§. 10.*

Slaughtering horses, &c. without a license, &c. felony.

Every person keeping or using any slaughterhouse, who shall kill or slay any horse, &c. for any other purpose than for butchers' meat, or shall slay any horse, &c. brought dead without taking out such license as aforesaid, or without giving notice, or shall kill or slay at any time other than within the hours, or shall not delay killing according to the directions of the inspector as before directed, shall be guilty of felony, and shall be punished by fine and imprisonment and such corporal punishment by public or private whipping or shall be transported for seven years, as the court convicting shall direct.

Lending slaughter houses.

If any unlicensed person shall occasionally lend any house, barn, stable, or other place for the purpose of slaughtering any horse, &c. which shall not be slaughtered for butchers' meat, and shall be thereof convicted (E) before one justice where such person shall reside upon the oaths of two witnesses, he shall forfeit for every offence any sum not exceeding 20*l.* nor less than 10*l.* half to the informer, and half to the poor of the parish where the offence shall be committed, which if not forthwith paid, such justice shall commit the offender to the common gaol or house of correction, without bail, for any time not exceeding three calendar months nor less than one calendar month, unless the penalty shall be sooner paid. *§. 13.*

Destroying or burying hides.

And if any licensed person shall throw into any lime pit or immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury the hide or skin of any horse, &c. by him slaughtered, or slayed; or shall be guilty of any offence against this act for which no penalty or punishment is provided, such person being convicted thereof, shall be deemed guilty of a *misdemeanour*, and shall be punished by fine and imprisonment

and such corporal punishment by public or private whipping, as the court convicting shall think proper. *f. 9.*

Provided that nothing herein shall extend to any currier, felt-maker, tanner, or dealer in hides, who shall kill any aged or distempered horse, &c. or purchase any dead one for the *bond fide* purpose of selling, using, or curing the hide thereof in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle; nor to any person who shall kill any of their own or other cattle, or purchase any that are dead, to feed their own hounds or dogs; or to give away the flesh thereof for the like purpose.

Persons excepted.

But every collar maker, currier, felt maker, tanner, or dealer in hides, farrier, or other person who shall, under colour of their respective trades, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof for the purpose of selling the same, shall forfeit not exceeding 20*l.* nor less than 10*l.* *f. 15.*

Persons not excepted.

Witnesses wilfully refusing or neglecting to appear, having been duly summoned, or refusing to give evidence, shall forfeit 10*l.*, and in default of payment thereof shall stand committed to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one calendar month, unless such penalty is sooner paid.

Witnesses.

Inhabitants of any parish shall be deemed competent witnesses, notwithstanding their paying to the rates, or being poor persons relieved or relievable by the parish, and entitled as such to receive benefit from the penalties. *f. 17.*

Inhabitants may be witnesses.

V. Putting stoned horses on commons.

No person shall put in any forest, chase, moor, heath, common, or waste where mares or fillies are used to be kept, any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South Hampshire, North Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln; nor under 14 hands in any other county (except Cornwall, 21 *f. c. 28. f. 12.*), on pain of forfeiting the same. 32 *H. 8. f. 13. f. 2. 10.*

But this shall not extend to the *marshes* in the counties of Cambridge, Huntingdon, Suffolk, Northampton, Lincoln, and Norfolk;

Norfolk; provided that the horses be of 13 hands. 18 *El.* c. 8. f. 3.

Stoned horses
breaking out of
an inclosure.

Also nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any pasture into such common, so that he do not stay there above four days after notice given at the dwelling-house of the owner, or after publication thereof on a *Sunday* or other festival in the parish church where the owner or possessor of such horse dwelleth. 32 *H.* 8. c. 13. f. 5.

Seizing horses
under size.

Any person may seize any such horse so being under size in manner following; he shall go to the keeper of such forest, or (out of such forest) to the constable of the next town, and require him to go with him, to bring such horse to the next pound, and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be found contrary to what is above expressed, such person may take him for his own use. f. 3.

And if such keeper, or constable, or other of the three persons, shall refuse to do as is aforesaid, he shall forfeit 40s. f. 4.

Driving the
common.

All such commons and other places shall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or constables, respectively, on pain of 40s., and they may also drive the same at any other time when they shall think meet. f. 6.

Defective mares,
&c.

If in any of the said drifts there shall be found any mare, filly, foal, or gelding, that shall then be thought not able nor like to grow to be able to bear foals of reasonable stature, or to do profitable labours, by the discretion of the drivers, or of the more number of them; they may kill and bury them. f. 7.

Penalties.

All which said forfeitures shall be half to the king, and half to him that shall sue; and the justices in sessions, and stewards of leets, may inquire thereof; and the steward shall certify his presentments to the next sessions.

VI. Putting scabbed horses on commons.

No person shall have, or put to pasture, any horse, gelding, or mare, infected with scab or mange, in any common, or common fields; on pain of 10s., which offence shall be inquirable in the leet, as other common annoyances be, and the forfeitures shall be to the lord of the leet. 32 *H.* 8. c. 13. f. 9.

A. Warrant to apprehend a horse stealer.

Westmorland. To the constable of ———

FORASMUCH as A. I. of ——— in the county of ——— yeoman hath this day made information and complaint upon oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that yesterday in the night a black mare, the property of him the said A. I. was feloniously stolen, taken, and carried away from and out of the grounds of him the said A. I. at ——— aforesaid, and that he hath just cause to suspect and doth suspect that A. O. late of ——— labourer did feloniously steal, take, and carry away the said mare: These are therefore to command you forthwith to apprehend him the said A. O. and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year of our Lord ———.

Or if the offence amount to burglary, then the warrant may be thus;

B. Westmorland. To the constable of ———

FORASMUCH as A. I. of ——— in the county of ——— yeoman hath this day made information and complaint upon oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that yesterday in the night he the said A. I. adjoining to the dwelling-house of him the said A. I. at ——— aforesaid was feloniously and burglariously broke open, and one black mare the property of him the said A. I. feloniously and burglariously stolen, taken, and carried away from thence; and that he hath just cause to suspect and doth suspect that A. O. late of ——— in the county aforesaid, labourer, the said felony and burglary did commit: These are therefore to command you forthwith to apprehend him the said A. O. and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year of our Lord ———.

C.

A. B. is convicted on the oath of A. W. inspector of houses and places for slaughtering horses, for the parish of ——— the county of ——— of refusing to pay the sum of ——— being the expence of an advertisement inserted in the Daily Advertiser,

vertiser, or some other public newspaper circulated in the county (as the case may be) pursuant to the directions of the statute in that case made and provided. Given, &c. (a)

D.

BE it remembered, that on this ——— day of ——— in the year ——— A. O. licensed for slaughtering horses, is convicted, upon the oaths of A. W. and B. W. two credible witnesses before me J. P. one of his majesty's justices of the peace for the county of ——— of having wilfully made, (or caused to be made) a false entry in the book required by the statute in that case made and provided, to be kept by the said A. O. whereby he has forfeited the sum of ———. Given, &c.

E.

BE it remembered, that on this ——— day of ——— A. O. was convicted upon the oaths of two credible witnesses, before me J. P. one of his majesty's justices of the peace for the county of ———, for occasionally lending an house (or place) for the purpose of slaughtering horses or cattle for other purposes than for butchers' meat, without a license for that purpose first obtained according to the statute in that case made and provided. Given, &c.

Horse races.

[13 G. 2. c. 19. — 24 G. 3. c. 31. s. 1. 5—7. 19—21.]

BY the 13 G. 2. c. 19. Whereas the great number of horse races for small plates or prizes have contributed very much to the encouragement of idleness, and impoverishment of many of the meaner sort of people, and the breed of strong and useful horses hath been much prejudiced thereby, it is enacted that no person shall enter, start, or run any horse, mare, or gelding, for any prize, unless the same shall be *bonâ fide* his own property; on pain of forfeiting the same, or the value thereof.

No person to enter a horse unless it be his own property.

(a) This and the two following precedents are taken from the statute.

Nor.

Nor shall any one person enter and start more than one horse, &c. for one and the same prize; on pain that every such horse, &c. (other than that which was first entered) shall be forfeited, or the value thereof.

Not to enter more than one horse for the same prize.

All sums of money paid for entrance shall go to the second best horse.

Entrance money.

No plate, prize, sum of money, or other thing, shall be run for or advertised or proclaimed to be run for by any horse, &c., unless such plate, &c. be of the real and intrinsic value of 50*l.* or upwards: And if any person shall enter, start, or run, any horse, &c. for any such plate, &c. under the value of 50*l.*, or shall make, print, advertise, or publish any advertisement or notice of any such prize under the value of 50*l.*, every such person so entering, starting, or running such horse, &c. shall forfeit 200*l.*, and every maker, printer, or publisher, advertiser, or proclaimer of such advertisement, shall forfeit 100*l.*

No prize to be less than 50*l.*

And no person shall start or run any match for any sum of money or other thing, unless it be at *Newmarket* or *Black Hambleton*, or unless such sum or other thing be of the real and intrinsic value of 50*l.* or upwards; on pain of 100*l.*

No match to be for less than 50*l.*

By *s. 4.* Every race run for any prize, plate, or sum of money shall be begun and ended in the same way.

In the case of *Johnson v. Bann*, *M. 31 G. 3.* An action was brought to recover a wager of 5*l.* on the event of a horse race; which was tried at the *Chester* assizes; when it appearing that the bet had been made on a horse race for a smaller sum than 50*l.*, it was objected by the defendant's counsel that as the subject of the wager was illegal, the wager itself was bad in law; and the plaintiff was nonsuited. — *Leycester* moved to set aside the nonsuit; contending, that as it was now determined in *Good v. Elliott* that wagers in general were legal, unless in particular cases, such as tend to a breach of the peace, or to immorality, or affect the interest or feelings of a third person, or expose him to ridicule, or libel him, or unless it be against sound policy that his wager is not void on any of these grounds. — But by the court, it is sufficient without adverting to cases, to say, that the horse race itself is prohibited by 13 *G. 2. c. 19. s. 2.*; and as the race which is the subject of the wager is illegal, so also is the wager. Rule refused. 4 *T. R. 1.*

A wager on a horse race under 50*l.*

In the case of *Bidmead v. Gale*, *E. 9 G. 3.* An action of covenant was brought upon articles to run a horse match. The agreement was, that each should start his mare; and that if either should refuse or neglect, he should forfeit and pay 25*l.* to the other. So that it was a match for 25*l.* each to play or pay; But the plaintiff was to pay the defendant

A match for 25*l.* a side, is a match for 50*l.*

5l. before-hand, as a consideration to induce him to make the match. The defendant afterwards refused to run the match. Whereupon the plaintiff brought this action against him, for the 25l. and assigned the breach of covenant, in the defendant's not starting his mare. The cause was tried before Mr. Baron *Perrot*, who considered it as a match for 50l. and directed a verdict for the plaintiff, with liberty to move an arrest of judgment. A motion in arrest of judgment was accordingly made. And the matter was reduced to this single question, Whether this were a match for 50l. or for less than 50l.? If it were for less than 50l. it is prohibited by the statute of 13 G. 3. c. 19. which enacts that no match, unless at *Newmarket* or *Black Hambleton*, shall be run for any sum of money or other thing of less value than 50l. — For the defendant it was urged that this was only a match for 25l. as neither party could lose more than that sum; or, at the utmost, a match for 45l. as the total of both sums risked did amount to no more; for there was no risk remaining upon the 5l. which the defendant had received from the plaintiff, and had safe in his purse, without possibility of losing it upon this match. The plaintiff's counsel argued that the sum run for was most manifestly 50l. and that the advancing 5l. certain made no sort of difference. — The court, as it turned upon the construction of a general act of parliament, took a few days to consider. After which L. *Mansfield* declared that they were all of opinion, that this was a match for 50l. though the stakes were unequal, of which the plaintiff contributed 30l. and the defendant 20l. that is, they staked after the proportion of three to two. 4 *Burr.* 2432.

The aforesaid penalties to be recovered in the courts at *Westminster*; or at the assizes, and be disposed of, half to him that shall sue, and half to the poor of the parish where the offence shall be committed.

Duty for race
horses.

By 24 G. 3. c. 31. For every horse, mare, or gelding entered to start or run for a plate, prize, sum of money, or other thing, shall be paid a duty of 2l. 2s. over and above all other duties. *§. 1.*

2l. 2s. to be paid
for one year.

The owner of every horse, &c. entered as aforesaid, shall previously pay to the clerk of the course, or other person authorized to make such entry, the sum of 2l. 2s. as the duty for one year; which if he neglect or refuse to do, he shall forfeit 20l. *§. 5.*

Duty of the
clerk of the
course.

And the clerk of the course or other person who shall receive such entrance money, shall within 14 days after the receipt thereof give an account of and pay the same to the distributor of the stamps, on pain of 100l. for not delivering such account, and double the money due at the time of such default.

default. And the distributor shall make him an allowance of 1s. in the pound for all monies accounted for and paid by him. *f. 6, 7.*

All penalties and forfeitures on this act may be recovered by confession or oath of one witness before any neighbouring justice, who may issue his warrant for levying the same on the goods of the offender, and if not redeemed in six days, may cause sale thereof, rendering the overplus, if any; the said penalty to be half to the king, and half to him that shall sue; and for want of sufficient distress, the offender to be committed to prison for three months, unless the penalty be sooner paid. *f. 19, 20.*

Penalties how to be recovered.

Persons aggrieved may appeal to the next sessions, (giving security to the amount of the penalty and costs,) whose determination shall be final, and if the judgment be affirmed they may award costs as to them shall seem meet. *Id.*

Appeal.

Penalties may be mitigated, to a sum not less than one moiety thereof, and costs. *f. 21.*

Mitigation.

Betting, losing, winning, cheating, and the like, at horse races, are within the statutes of Gaming, for which see the title **Gaming**.

For Duty on horses and liveries.. See **Taxes**.

house.

See **Burglary**.

A Man's home or habitation is so far protected by the law, that if any person attempt to break open a house in the night time and is killed in such attempt, the slayer shall be acquitted and discharged. And so tender is the law in respect of the immunity of a man's house, that it will never suffer it to be violated with impunity. Hence in part arises the animadversion of the law upon eavesdroppers, nuisances, and incendiaries; and to this principle it must be assigned, that a man may assemble people together lawfully (at least if they do not exceed eleven) without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house, which he is not permitted to do in any other case. 4 *Black.* 223.

How far protected by law.

In the case of burglary, which is breaking and entering a dwelling-house in the night time with intent to commit felony, it is a capital offence, although no felony be actually committed, for which see title **Burglary**. Where the offence falls short of burglary, it is by several particular

Burglary and felony.

cular statutes made felony without benefit of clergy, to rob any dwelling-house in the day-time, any person being therein; or stealing in the day time to the value of 5s. in any dwelling-house or out house thereunto belonging, although no person be therein; or stealing to the value of 40s. in any such dwelling-house or out-house, although the same be not broken open; or breaking a house in the day time, any person being therein and put in fear, although nothing be stolen; or privately stealing any goods to the value of 5s. in any shop, warehouse, or stable, although it be not broken open nor any person be therein. And a reward of 40l. is given to any person who shall apprehend and prosecute to conviction any person guilty of the felonious breaking and entering of a dwelling-house either by day or night. For all which cases see title *Larceny*.

Breaking open
doors to apprehend
offenders.

Concerning the breaking open the doors of an house in order to apprehend offenders, it is to be observed that the law never allows of such extremities but in cases of necessity; and therefore that no one can justify the breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw. c. 14. f. 1.*

But where a person, authorized to arrest another who is sheltered in an house, is denied quietly to enter into it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors in any case where the king is party, as upon a warrant from a justice of the peace to find sureties for the peace or good behaviour, or for the levying of a forfeiture upon a penal statute, which gives the whole or any part of such forfeiture to the king. *Id. f. 2.*

In a civil suit; an officer cannot justify breaking open an outward door or window in order to execute process. If he do, he is a trespasser. But if he find the outer door open, and enter that way, or if the door be opened to him from within, and he enter, he may break open inward doors if he find that necessary, in order to execute his process. *Fost. 319.*

For a man's house is his castle, for safety and repose to himself and family; but if a stranger, who is not of the family, upon a pursuit taketh refuge in the house of another, this rule doth not extend to him, it is not his castle, he cannot claim the benefit of sanctuary therein. *Id. 326.*

For duty of houses. See *Taxes*.

House of correction. See *Coal, Sect. XV.*

Concerning *penitentiary* houses for the punishment of convicts, see title *Transportation*.

Hue and cry.

Sect. I. *It's nature.*H. *Statutes relating thereto.*

3 Ed. 1. c. 9. — 13 Ed. 1. st. 2. c. 1. — c. 4. — c. 6. —
 18 Ed. 2. — 27 El. c. 13. f. 10. — 7 J. c. 5.]

I. *It's nature.*

LORD Coke saith that hue and cry (called in ancient records *hutesum & clamor*) do mean the same thing; Meaning of words.
 for that *huer* in *French* is to hoot or shout, in *English* to cry.
 2 *Inst.* 173. 3 *Inst.* 116.

But since it appeareth by the old books (of which also *L. Coke* maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesum* or *hooting* is by the *horn*, and *crying* by the *voice*; which also accordeth with the *French* word *hutchet*, which signifieth a huntsman's horn; so that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in *Scotland*. And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felons, seemeth to have been in use of very ancient time; for amongst the laws of *Wihfred* king of *Kent*, in the year 696, this is one; that "if a stranger go out of the road, and neither shout nor blow a horn, he shall be taken for a thief."

Hue and cry is the old common law process after felons, and such as have dangerously wounded any person; and this hath received great countenance and authority by several acts of parliament. 2 *H. H.* 298. Hue and cry, what.

To prevent felonies; in walled towns the gates shall be shut from sun-setting to sun-rising; and none shall lodge without the town from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept; and if a watchman arrest a night walker, and he disobey and fly, the watchman may make hue and cry. Watches to be kept.
 13 *Ed.* 1. st. 2. c. 4.

When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night, the party grieved, or any other, may resort to the constable of the vill;
Application to the constable.

vill; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he know the name of him that did it, he must tell the constable the same. 3. If he know it not but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery or burglary or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found. 2 *H. H.* 100, 101. 3 *Inst.* 116.

Justice's warrant.

For levying hue and cry, although it is a good course to have the warrant (A.) of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes it is by no means necessary, nor is it always convenient, for the felon may escape before the warrant be obtained, and hue and cry was part of the law before justices of the peace were first instituted. 2 *H. H.* 99.

Constable to raise the town.

The duty of the constable is, to raise the power of the town, as well in the night as in the day for the prosecution of the offender. 3 *Inst.* 116.

And to search.

And upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors to search.

But though he may search suspected places or houses, yet his entry must be by the door's being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there; and then it is true he may; therefore in case of such a search the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there. But it must be always remembered that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* c. 14. s. 1.

Notice to the next constable.

If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender

offender be found, or till they come to the sea-side. And this was the law before the conquest. 3 *Inst.* 116.

And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt.* c. 54.

And to the next.

But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such hue and cry is good, as hath been said, and must be pursued, though no person certain be named or described. 2 *H. H.* 103.

What shall be done where the person cannot be described.

And therefore in this case all that can be done is, for those that pursue the hue and cry to take such persons as they have probable cause to suspect, as for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they have been, and the like. *Id.*

By the statute of 3 *Ed. 1. c. 9.* All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst.* 171.) and at the cry of the county, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

All persons shall follow the hue and cry.

By the statute of the 13 *Ed. 1. §. 2. c. 1.* It is likewise enacted that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 *El. c. 13. §. 10.*

And the life of hue and cry is fresh suit. 3 *Inst.* 117.

If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: And the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H.* 102.

Breaking doors to arrest upon pursuit.

And

Killing in the
pursuit.

And it seems in this case, that if he cannot be otherwise taken, he may be killed; and the necessity excuseth the constable. 2 *H. H.* 102.

Arresting an in-
nocent person.

If hue and cry be raised against a person certain for felony, though possibly he is innocent, yet the constables and those that follow the hue and cry may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the felony committed, and the like. *Id.*

Arresting a per-
son by descrip-
tion.

If the hue and cry be not against a person certain, but by description of his stature, person, clothes, horse, and the like, yet the hue and cry doth justify the constable or other person following it, in apprehending the person so described, whether innocent or guilty: For that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a person by description. 2 *H. H.* 103.

Arresting upon
hue and cry
levied without
cause.

In case of hue and cry once raised and levied, on supposal of a felony committed, though in truth there was no felony committed, yet those that pursue hue and cry, may arrest and proceed, as if so be a felony had been really committed.

And therefore the justification of an imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon information of a felony is sufficient, though perchance the information were false.

And the reasons hereof are these: 1. Because the constable cannot examine the truth or falsehood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace, the felon might escape, and the pursuit would be lost and fruitless. 2. Because the constable is by the several acts of parliament compellable to pursue hue and cry, and he is punishable, and so are those of the vill, if they do it not. 3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that pursue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: And by the same reason, if he give notice of a felony committed, where there was in truth none.

And

And here the justification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own suspicion; and therefore, 1. In respect that it is upon hue and cry, there needs no averment that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry, or if the arrest were made by that constable, or those vills to whom the hue and cry came at the second hand, it must be averred that such a hue and cry came to them, purporting such a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is left to the suspicion and discretion of the constable, or of the people of the second or third vill, he that arrests any person upon such general hue and cry must aver that he suspected, and shew a reasonable cause of suspicion.

But now by the statute of 7 J. c. 5. the constable, or any that come to his assistance, even in this case of hue and cry may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants within the precincts of their constablewick. 2 H. H. 101, 2, 3, 4.

It seems that they who are taken upon fresh hue and cry are not bailable, as being to be accounted amongst those persons who are under a violent presumption of guilt. 2 Haw. c. 15. s. 41.

Persons taken on hue and cry how far bailable.

By the 13 Ed. 1. st. 2. c. 6. Constables of hundreds shall be chosen, who shall present before justices assigned defaults of the suits of towns, and all such as lodge strangers in uplandish towns, for whom they will not answer.

High constables to present those who pursue not hue and cry.

And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 Inst. 117.

Punishment of those who follow not hue and cry.

And it is an article of the leet to inquire of hues and cries levied and not pursued. 18 Ed. 2.

Power of the leet to inquire thereto.

In an action on the statute of hue and cry for robbery, the plaintiff is entitled to costs. 2 Wilf. 92. 1 T. R. 70.

Costs in actions on the statute.

Sect. II. Of the statutes relating to Hue and Cry.

Several statutes have been from time to time enacted relative to the making of hue and cry.

By the statute of 3 Ed. 1. c. 9. All shall be ready, and appareled, at the commandment and summons of sheriffs (or

(or constables, 2 *Inst.* 171.) and at the cry of the county, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

By the statute of the 13 *Ed.* 1. *ft.* 2. *c.* 1. It is likewise enacted that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 *El.* *c.* 13. *f.* 10.

By the 27 *Eliz.* *c.* 13. entitled, "*The act for following hue and cry,*" it is enacted, *f.* 1. That the inhabitants and residents of every hundred, with the franchises within the precinct thereof, wherein negligence, fault, or defect of pursuit and fresh suit after *hue and cry* made shall happen to be, shall answer the one moiety of every sum and damages as shall by force or virtue of the said statutes 13 *Ed.* 1. *ft.* 2. *c.* 1. & 2.; & 28 *Ed.* 3. *c.* 11. or either of them be recovered against the said hundred with the franchises therein, in which any robbery or felony shall at any time hereafter be committed or done, and the same moiety shall be recovered by action or information in any court of record at *Westminster*, by and in the name of the clerk of the peace of or in every such county within this realm where any such robbery and recovery by the party or parties robbed.

How taxation
shall be made.

After execution of damages by the party so robbed had, it shall be lawful (upon complaint made by the party so charged) for two justices of the same county, inhabiting within the said hundred, or near unto the same where any such execution shall be had, to assess and tax rateably and proportionably according to the discretions all and every the towns, parishes, villages, and hamlets, as well of the said hundred where any such robbery shall be committed, as of the liberties within the said hundred, to and towards an equal contribution to be had and made for the relief of the said inhabitant or inhabitants against whom the party robbed before that time had his or their execution. And after such taxation made, the constables or headboroughs of every such town, &c. shall by virtue of this act have full power within their several limits rateably and proportionably to tax and assess according to their abilities, every inhabitant and dweller in every such town, &c. for and towards the payment of such taxation and assessment, as shall be so made upon every such town, &c. as aforesaid by the said justices. And if any inhabitant of any such town, &c. shall obstinately refuse and deny to pay the said taxation and assessment, so by the

the said constables, &c. taxed and assessed, then it shall be lawful for the said constables, &c. and every of them within their several limits and jurisdictions to distrain every person so refusing and denying by their goods and chattels, and the same distress to sell, and the money thereof coming to retain to the use aforesaid; and if the goods or chattels so distrained and sold shall be of more value than the said taxation shall come unto, that then the residue of the said money over and above the said taxation shall be delivered unto the said person or persons so distrained. *f. 5.*

And every the said constables and headboroughs, after that they have within their several limits and jurisdictions levied and collected their said rates and sums of money so taxed, shall, within ten days after such collection, pay and deliver the same over unto the said justices, or one of them, to the use of the said inhabitant or inhabitants for whom such rate, &c. shall be had or made as aforesaid, which money so paid shall, by the justices or justice so receiving the same, be delivered over (upon request made) unto the said inhabitant or inhabitants to whose use the same was collected. *f. 6.*

Constable to pay over in 10 days the money collected.

And the like taxation, &c. by distress and payment as aforesaid, shall be had and done within every hundred where default or negligence of pursuit and fresh suit shall be for and to the benefit of every inhabitant of the same hundred where such default shall be, that shall at any time hereafter by virtue of this present act have any damages or money levied of them for or to the payment of the one moiety or half of the money recovered against the said hundred where any robbery shall be hereafter committed. *f. 7.*

Provided that where any robbery shall be hereafter committed by two or a greater number of malefactors, and that it happens any one of the said offenders be apprehended by pursuit to be made according to the said former mentioned laws and statutes, or according to this present act, in such case no hundred or franchise shall in any wise incur or fall into the penalty, loss, or forfeiture mentioned either in this present act, or in any the said former statutes, although the residue of the said malefactors shall happen to escape and not to be apprehended. *f. 8.*

Apprehending one offender shall save the parish from penalty.

Provided that no person hereafter robbed shall take any benefit by virtue of any the said former statutes, to charge any hundred where any such robbery shall be committed, except he shall commence his suit or action within one year next after such robbery. *f. 9.*

And no hue and cry or pursuit hereafter to be done or made by the country or inhabitants of any hundred shall be allowed and taken to be a lawful hue and cry or pursuit

By whom a lawful hue and cry may be made.

upon or after any the said felons or offenders, except the same hue and cry or pursuit be done and made by horsemen and footmen. *f. 10.*

What must be done in order to have an action against the hundred.

And no person that shall hereafter happen to be robbed shall maintain any action or take any benefit by virtue of the said two mentioned statutes, or either of them, except the same person so robbed, shall, with as much convenient speed as may be, give notice and intelligence of the said felony or robbery so committed, unto some of the inhabitants of some town, village, or hamlet near unto the place where any such robbery shall be committed, nor shall bring or have any action upon and by virtue of any the statutes aforesaid, except he or they shall first, within 20 days next before such action to be brought, be examined upon his or their corporal oath, to be taken before some one justice of the peace of the county where the robbery was committed; inhabiting within the said hundred where the robbery was committed, or near unto the same, whether he or they do know the parties that committed the said robbery or any of them; and if upon such examination it be confessed that he or they do know the parties that committed the said robbery, or any of them, that then he or they so confessing shall, before the said action be commenced or brought, enter into sufficient bond by recognizance before the said justice before whom the said examination is had, effectually to prosecute the same person and persons so known to have committed the said robbery, by indictment or otherwise, according to the due course of the laws of this realm.

For the sake of general information, the following correct abridgment of the statute of 8 G. 2. c. 16. for the amendment of the law relating to actions on the statutes of *Hue and Cry*, is here inserted.

How notice shall be given.

f. 1. No person shall have any action against any hundred unless he shall over, and besides the notice already required by the 27th *Eliz. c. 13.* to be given of any robbery, with as convenient speed as may be after any robbery on him committed, give notice thereof to one of the constables of the hundred, or to some constable, boroughholder, headborough, or tithingman of some town, parish, village, hamlet, or tithing near unto the place wherein such robbery shall happen, or shall leave notice in writing of such robbery at the dwelling-house of such constable, &c. describing in such notice to be given or left as aforesaid, so far as the nature and circumstances of the case will admit, the felon or felons and the time and place of the robbery, and also shall, within 20 days after the robbery committed, cause public notice to be given thereof in the *London Gazette*, therein likewise describing, as far as the nature and circumstances of the case will

will admit, the felon or felons, and the time and place of such robbery, together with the goods and effects whereof he was robbed, and shall also, before any such action be commenced, go before the chief clerk or secondary, or the filazer of the county wherein such robbery shall happen, or the clerk of the pleas of that court wherein such action is intended to be brought, or their respective deputies, or before the sheriff of the county wherein the robbery shall happen, and enter into a bond to the high constable or high constables of the hundred in which such robbery shall be committed, in the sum of 100l. with two sufficient sureties to be approved of by such chief clerk, &c. or the sheriff of the said county, with condition for securing to such high constable, &c. (who shall enter an appearance, and also defend such action as hereinafter is mentioned) the due payment of his or their costs after the same shall be taxed by the proper officer, in case that the plaintiff in such action shall happen to be nonsuited or shall discontinue his action, or in case that judgment shall be given against such plaintiff on demurrer, or that a verdict shall be given against him.

f. 2. And when any such bond shall be entered into before the said sheriff, such sheriff shall immediately certify the same in writing to the chief clerk or secondary in the court of King's Bench, or his or their deputy, or to the filazer of that county wherein such robbery shall be committed, or his deputy, in case the action be intended to be brought in the court of Common Pleas, or, if in the court of Exchequer, to the clerk of the peace or his deputy, which certificate shall be delivered by the party robbed to the said chief clerk or secondary, &c. before any process shall issue for the commencement of such suit as aforesaid.

Bond to the sheriff.

f. 3. And no hundred or franchise therein shall be chargeable by virtue of the above-mentioned or any other statute, if one or more of the felons by whom such robbery shall be committed, be apprehended within 40 days next after such public notice given in the *London Gazette*.

Hundred not chargeable, if felon apprehended in 40 days.

f. 4. No process for appearance in any action to be brought upon the statutes, or either of them, against any hundred, shall be served on any inhabitant thereof, save only upon the high constable or high constables of the hundred, who shall cause public notice thereof to be given in one of the principal-market towns within such hundred, on the next market day after he shall be served with such process, or if there shall happen to be no market town within such hundred, then in some parish church within the hundred, immediately after divine service on the *Sunday* next after his being served with such process, and he shall enter an appearance in the said action, and also defend the same for

On whom notice shall be served.

the inhabitants of the said hundred, as he shall be advised, and in case the plaintiff shall recover and obtain judgment therein, then no process of execution shall be served on any particular inhabitant of the said hundred or any franchise within the precinct thereof, nor on the said high constable or high constables, but the sheriff or his officer shall upon the receipt of any writ of execution in pursuance of the said judgment, cause the same to be produced and shewn *gratis* unto two justices residing within the said hundred, or near unto the same, who shall thereupon cause such taxation and assessment to be made, levied, and collected as under 27 *Eliz.*, in which taxation and assessment there shall be provided for, over and above what the costs and damages recovered by the plaintiff shall amount to, all such necessary expences which any high constable or high constables shall be at in having defended any such action, claim being made thereto by such high constable or high constables before the said justices, upon due notice being given to him or them by the said justices for that purpose, and the sums of money so to be levied and collected shall be paid over and delivered (by such officer or officers as by the said statute made in the 27th year of the reign of queen *Eliz.* are to levy and collect the same,) within ten days after such collection, to the sheriff of the county wherein the robbery shall happen, to the use of the plaintiff, for so much as the costs and damages by him recovered shall amount to, and to the use of the said high constable, &c. for so much as his expences in defending the said action shall amount to, of which the said high constable, &c. shall give in an account, and make due proof upon oath to the satisfaction of the said justices, before any taxation and assessment shall be made for the reimbursing such high constable, &c., and shall in such expences have no further allowance towards paying an attorney to defend the said action than what such attorney's bill shall be taxed at by the proper officer of that court where such action shall be brought, which the said high constable, &c. shall cause to be taxed for that purpose.

Sheriff to return writ of execution in 60 days.

§. 6. No sheriff shall be called upon to make any return to any such writ of execution as shall issue or be made out upon any judgment which shall be recovered in an action brought against any hundred by virtue of the above-mentioned statutes, or either of them, until after the expiration of 60 days next after the day whereupon such writ or writs shall be delivered to the said sheriff, who is hereby required to indorse on the back thereof the day on which he received the same.

Where the plaintiff is de-

§. 7. If any plaintiff in any action to be brought against any hundred upon the statutes above-mentioned, or either of them, shall

shall be nonsuited or shall discontinue his action, or shall have a judgment on demurrer given, or a verdict pass against him, it shall be lawful for any two justices (such as are hereinbefore mentioned), upon complaint to them made for that purpose, and upon an account given in by such high constable, &c. and proof made upon oath to the satisfaction of the said justices, of such expences necessarily laid out as aforesaid, to make and cause such taxation and assessment to be made, and to be levied and collected in such manner as is directed by the said 27th *Eliz.*, in order thereby to reimburse all such charges as he shall have necessarily expended in defending such action, and in case it shall be made appear upon oath to the said justices, that such plaintiff and also his sureties is insolvent, so that the said high constable, &c. can have no relief as to such taxed costs (save only by the power hereinafter given to the said justices), it shall be lawful for such two justices to make and cause a taxation and assessment to be made and to be levied and collected as by said 27th *Eliz.* in order thereby to reimburse such high constable, &c. such taxed costs as by reason of such insolvency he shall not be able to recover and receive from the plaintiff in the action, or his sureties as aforesaid.

feated, how
costs shall be
levied.

f. 8. And the several sums of money which shall be rated and assessed, and levied and collected as aforesaid, for the reimbursement of the expences necessarily sustained by any high constable, &c. in defence of any action brought against the hundred upon the statutes above mentioned, or either of them, in case of any judgment given against the plaintiff, shall be paid within 10 days after such collection unto the said justices, or one of them, to the use of such high constable, &c. to whom the said justices shall upon request pay and deliver over the same.

f. 9. Any person or persons who shall apprehend such felon or felons within the time hereinbefore limited for that purpose, whereby the hundred hath been actually indemnified or discharged from any such action as aforesaid, shall, upon due proof thereof upon oath made before such two justices as aforesaid, be intitled to the reward of 10*l.* (which sum shall be raised upon the hundred by a taxation and assessment, to be made and to be levied and collected in the same manner as the other sums of money by this present act appointed to be raised upon the hundred are directed to be assessed, levied and collected,) and such sum of 10*l.* shall be paid unto two such justices, within 10 days next after the same shall be so levied and collected, to the use of the person who shall be thereunto entitled, as a reward for having so apprehended such felon as aforesaid, and such justices shall upon reasonable request made for that purpose,

Reward to persons apprehending the felon.

pay over and deliver the said sum to such person or persons accordingly, in such shares and proportions as the said justices shall think reasonable: Provided always, that such person or persons so entitled to such reward, shall not be thereby rendered incapable to be a witness in any such action.

f. 10. The justices by whom such taxations and assessments as aforesaid shall, in pursuance of the said 27th *Eliz.* and also of this act, be made, shall limit at their discretion some certain reasonable time within which such taxations and assessments shall be levied and collected, which time shall not exceed 30 days, and also that if any such officer who is to levy and collect such taxations and assessments, shall refuse or neglect to levy and collect the same within such time as shall be so limited, or shall refuse or neglect to pay and deliver over the sums of money so levied and collected to the said sheriff, and also to the said justices, in such manner as the same in the several cases hereinbefore mentioned are respectively directed to be paid, within the respective times hereinbefore limited for such payment thereof, every such offender shall, for every such refusal or neglect, forfeit double the sum appointed to be by him levied and collected as aforesaid.

f. 11. Every constable, borsholder, headborough, or tithingman, to whom notice shall be given, or at whose dwelling-house notice of any robbery shall be left as aforesaid, and every constable of the hundred, and every constable, borsholder, headborough, or tithingman, of any town, parish, village, hamlet, or tithing, within the hundred, or the franchises within the precinct thereof, wherein such robbery shall happen, as soon as the same shall come to his knowledge, either by notice from the party or parties robbed, or from any other person or persons to whom notice shall be given thereof, pursuant to this present or any other statute, shall with the utmost expedition make and cause to be made fresh suit and *hue and cry* after the felon or felons by whom such robbery shall be committed, and if any constable, borsholder, headborough, or tithingman, shall offend in the premises by refusing or neglecting to make or cause to be made such fresh suit and *hue and cry* as aforesaid, every such offender shall for every such refusal or neglect forfeit 5*l.*

f. 12. Every forfeiture hereby incurred shall be recovered with full costs of suit, and shall be as to one moiety thereof to the use of the king, and as to the other moiety thereof, to the use of such person or persons as shall sue for the same, within six months next after such forfeiture shall be incurred, by action of debt, bill, plaint, or information.

f. 13. If any action, suit, or information shall be commenced or prosecuted against any person or persons for any thing done in pursuance of this or either of the hereinbefore recited statutes; in every such case the defendant may plead the general issue, and give this and the aforesaid statutes or either of them and the special matter in evidence, and upon nonsuit or discontinuance, or verdict against the plaintiff, or judgment against him upon demurrer or otherwise, the defendant shall recover full costs, for which he shall have the like remedy as defendants have by law in other cases of costs.

By 22 G. 2. c. 24. No person shall recover against any inhabitant of any hundred in any action on any of the statutes of *hue and cry*, more than the value of 200l., unless the person or persons so robbed shall, at the time of such robbery for which such action shall be brought, be together in company, and be in number two at the least, to attest the truth of his or their being so robbed.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland. } To all constables and other officers, as well
in the said county of *Westmorland*, as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I. of _____ in the county of _____ yeoman, hath this day made information upon oath before me J. P. Esquire, one of his majesty's justices of the peace in and for the said county of W. that on this present _____ day of _____ in the _____ year of the reign of _____ betwixt the hours of three and four in the afternoon of the same day, at a place called _____ in the said county of W. in the king's highway there, two malefactors and felons to him the said A. I. unknown, in and upon him the said A. I. then and there being in the peace of God and of our lord the king, feloniously did make an assault, and him the said A. I. then and there feloniously did put in great fear and danger of his life, and the sum of _____ of lawful money of Great Britain, of the goods and chattels of him the said A. I. from the person and against the will of him the said A. I. then and there violently and feloniously did steal, take, and carry away; and that one of the said malefactors and felons, to him the said A. I. unknown, is a tall, strong man, and seemeth to be about the age of _____ years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding with

with a star on his forehead, and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said A. I. unknown, did fly and withdraw themselves to places unknown, and are not yet apprehended; these are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit and hue and cry after them from town to town and from county to county, as well by horsemen as by footmen; and to give due notice thereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall as well upon such search and pursuit, as otherwise, apprehend or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, ——— in the said county of W. the ——— day of ——— aforesaid, in the year aforesaid.

Hundred.

[22 G.2. c. 46. s. 34.]

Hundred whence
so called.

IN ancient times, before the conquest, it was ordained for the more sure keeping of the peace that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called tythings, as containing the number of ten men with their families; and even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is, called an hundred. *Lamb. Conf.*

If any homicide be committed, or dangerous wound given, in the day time, and the offender escape, the town shall be amerced; and if out of the town, the hundred shall be amerced. 2 *Haw. c. 12. s. 2.*

Hundred to be
amerced for an
escape.

The hundred shall make good the damages, in cases of robbery; cutting banks, cutting hop-binds; burning houses, barns, outhouses, hovels, cocks, mows, or stacks of corn, straw, hay, or wood; mines, or pits of coal; destroying granaries, or corn intended for exportation; destroying turnpikes; or works of navigable rivers; and the like; as may be seen under their proper titles.

Hundred answerable in divers other cases.

Writs of execution which shall be sued out against the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, shall not be levied on any particular inhabitants, but shall by the sheriff on receipt thereof be produced to two justices in such manner as is directed by the stat. 8 G. 2. relating to actions on the statute of hue and cry; and the said justices shall cause a taxation to be made and levied by the constables in 30 days for paying the plaintiff's costs and damages, and also all such necessary expences as any inhabitants shall have been at in defending such action; the same being first proved on oath before the said justices; and the attorney's bill taxed. And the said sums shall be paid to the sheriff by the constables in ten days after the time is expired for collecting; and by the sheriff, to the persons entitled to receive the same, without any deduction or fee; all in the same manner as is directed by the statute of the 8 G. 2. c. 16. in cases of robbery. 22 G. 2. c. 46. f. 34. (See the preceding title.)

Damages how to be levied.

By 1 G. 1. f. 2. c. 7. f. 6. If any church or chapel or any building for religious worship certified and registered according to 1 W. & M. f. 1. c. 18. or any dwelling-house, barn, stable, or outhouse shall be demolished or pulled down wholly or in part by any persons so unlawfully, riotously, and tumultuously assembled, then in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or outhouse, shall be out of any city or town that is either a county of itself or is not within any hundred, the inhabitants of the hundred in which such damage shall be done shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly or in part, and such damages shall be recovered by action by the person or persons damnified thereby against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel, and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised

raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs in such manner and form and by such ways and means as are provided by the statute made in the 27th *Eliz.* for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied; and in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or outhouse, so damnified, shall be in any city or town that is either a county of itself or is not within any hundred, that then such damages shall and may be recovered by action against two or more inhabitants of such city or town, and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall at the request of such plaintiff or plaintiffs, his or their executors or administrators made to the justices of the peace of such city or town, at any quarter sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs in such manner and form, and by such ways and means as are provided by the said statute made in the 27th *Eliz.* for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed shall be levied.

This act shall be openly read at every sessions and at every leet or law day.

No person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within 12 months after the offence committed.

By 9 *Geo. 1. c. 22. s. 7.* The inhabitants of every hundred shall make full satisfaction and amends to every person, his executors and administrators, for the damages he shall have sustained or suffered by the killing or maiming of any cattle, cutting down or destroying any trees, or setting fire to any house, barn, or outhouse, hovel, cock, mow, or stack of corn, straw, hay or wood, which shall be committed or done by any offender or offenders against this act; and every person who shall sustain damages by any of the offences last mentioned, shall be hereby enabled to sue for and recover such his damages, the sum to be recovered not exceeding the sum of 200*l.*, against the inhabitants of the said hundred, who by this act shall be made liable to answer all or any part thereof; and if such person shall recover in such action, and sue execution against any of such inhabitants, all other the inhabitants of the hundred who by this act shall be made liable to all or any part of the said damage, shall be rateably and proportionably taxed for and towards an equal contribution for the relief of such inhabitant against whom such execution

execution shall be had and levied, which tax shall be made, levied, and raised by such ways and means, and in such manner and form as is prescribed and mentioned for the levying and raising damages, recovered against inhabitants of hundreds in cases of robberies in and by an act, intituled, *An act for the following hue and cry*, made in the 27th year of queen *Eliz.*

No person shall be enabled to recover by this act, unless he by himself or by his servant, within two days after such damage or injury done him by any such offender as foresaid, shall give notice of such offence done and committed, unto some of the inhabitants of some town, village, or hamlet near unto the place where any such fact shall be committed, and shall within four days after such notice given in his examination upon oath, or the examination upon oath of his servant or servants that had the care of his houses, outhouses, corn, hay, straw, or wood before any justice of the peace, where such fact shall be committed, inhabiting within the said hundred where the said fact shall appen to be committed or near unto the same, whether he do know the person or persons that committed such fact or any of them; and if upon examination it be confessed that he do know the person or persons that committed the said fact, or any of them, that then he so confessing shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise according to the laws of this realm.

Provided also, that where any offence shall be committed against this act, and any one of the said offenders shall be apprehended and lawfully convicted of such offence within the space of six months after such notice committed, no hundred or any inhabitants thereof shall in anywise be subject or liable to make any satisfaction to the party injured for the damages he shall have sustained, any thing in this act to the contrary notwithstanding.

Provided also, that no person who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action or suit within one year next after such offence shall be committed.

By 29 G. 2. c. 7. §. 5. If any person whatsoever which shall travel upon the Lord's day shall be then robbed, no hundred or the inhabitants thereof shall be charged with or answerable for any robbery so committed, but the person so robbed shall be barred from bringing any action for the said robbery, any law to the contrary notwithstanding. Nevertheless

Robbery of persons travelling on the Lord's day.

theless the inhabitants of the counties and hundreds (after notice of any such robbery to them or some of them given or after hue and cry for the same to be brought) shall make or cause to be made fresh suit and pursuit after the offenders with horsemen and footmen according to the 27 *Eliz. c. 13* upon pain of forfeiting to the king as much money as might have been recovered against the hundred by the party robbed if this law had not been made.

Note. The cases of actions against the inhabitants of a hundred are not here inserted, as it is conceived that they more properly belong to a work entirely different from the present.

In *R. v. the hundred of Halfshire, T. 33 G. 3.* it was determined that an order of justices for levying money upon the inhabitants of an hundred under the riot act directing that the money, when levied, shall be paid into the hands of a banker, subject to their further order, is bad; it ought to have been ordered to be paid to the persons entitled to receive the same. It seems that a writ of execution sued out by the party who has recovered damage against the hundred, and delivered by the sheriff to the justices, is a good foundation for an order to levy the amount. The order for levying the damages ought to be upon the inhabitants of the *towns, parishes, villages, and hamlets*, pursuant to the words of the 27 *Eliz.* and not upon the inhabitants of the *districts and parishes* within the hundred. 5 *T. R.* 341.

[And see the statutes of *Hue and Cry*, *ante*, that title.]

Hunting. See *Game*.

Husband. See *Wife*.

ADDENDA.

Excise and Customs.

BY 53 G.3. c. 21. For the necessary subsistence of any poor person confined under or by virtue of any exchequer process, for the recovery of any duties or penalties by virtue of any act or acts relating to the departments of customs and excise, or either of them, or confined under or by virtue of any warrant or warrants of commitment in execution, commonly called *A Body Warrant*, issued by the commissioners of excise, or by any justices within *Great Britain*, by virtue of any act or acts relating to the department of customs and excise, or either of them, or confined by virtue of any writ of extent for debts due to His Majesty, sued for by virtue of the order of the commissioners of customs or excise, or on suit upon bonds taken pursuant to orders in council, it shall be lawful for the commissioners of customs or excise as the case may require, or any four or more of them in *England*, to cause an allowance not exceeding seven-pence halfpenny, and not less than four-pence halfpenny *per day* to be made to any such poor person, out of any money in their hands respectively, arising from the duties of customs or excise as the case may require.

Allowance to poor persons confined under exchequer process.

Exportation.

By 53 G.3. c. 105. s. 9. If any goods, &c. prohibited to be exported, shall be laden or shipped or put on board any vessel or boat with the intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place in *Great Britain*, in order to be laden or put on board any ship, vessel, or boat for the purpose of being exported; or if any goods, &c. which are prohibited to be exported shall be found in any package produced to the officers of the customs as containing goods not so prohibited, in every such case, not only all such prohibited goods, but also all other goods, wares, and merchandize packed therewith, shall be forfeited and lost, and shall and may be seized by any officer or officers of the customs.

For preventing clandestine exportation of goods.

By

Emigration.

By 53 G. 3. c. 36. reciting, that whereas by 43 G. 3. c. 56. Every ship or vessel other than a *British* ship or vessel, owned, navigated, and registered according to law, shall be deemed and taken to be of such tonnage or burthen as shall be ascertained by the oath of the master or other person having or taking the command thereof, taken before the collector or other chief officer of the customs at the port from whence such ship or vessel shall be cleared out: And that it is expedient to provide a further remedy for ascertaining the tonnage of any such ship or vessel: it is enacted, that if the collector, or other chief officer of the customs at such port, shall have any doubt as to the tonnage of any such ship or vessel as sworn to by such master or other person, or shall be required by any person or persons having such doubt, he shall cause such ship or vessel to be admeasured in the manner in which a *British* ship is admeasured for the purpose of being registered, and upon being so admeasured, she shall be deemed to be of the tonnage or burthen ascertained by such admeasurement, notwithstanding the oath of any such master or other person.

Vessels may be admeasured in case of doubt as to the tonnage.

Vessels in the service of the Hudson's Bay Company exempted, provided they shall not carry more than 20 passengers.

§. 2. And nothing in the said recited act shall extend to any ship or vessel in the service of the governor and company of adventurers of *England* trading into *Hudson's Bay*, provided such ship or vessel shall not carry more than 20 passengers besides the crew; and if any such ship or vessel shall carry more than 20 passengers, provided a licence shall be granted by His Majesty in council, in manner herein directed for such ship or vessel to carry more than 20 passengers, specifying the number and description of such passengers: Provided nevertheless, that it shall and may be lawful for any ship or vessel in the service of the said governor and company to sail without such licence, subject to the provisions of the said recited act, if the said governor and company shall think fit.

If such vessels be intended to carry a greater number, a plan of the interior to be laid before His Majesty in council, &c.

§. 3. And when it is intended that any such ship or vessel shall carry a greater number, the said governor and company shall lay before His Majesty in council a plan of the interior of such ship or vessel, with a statement specifying the dimensions of that part of such ship or vessel which is to be allotted to the use of the passengers, and the manner in which it has been fitted up for their accommodation, as also the number and description of passengers to be received on board, and thereupon a licence shall be granted. Provided that such passengers being full grown men do not exceed the number of infantry usually conveyed in His Majesty's

Majesty's

Majesty's transport service, for a similar voyage on board of a vessel possessing similar accommodations; or provided that such passengers not being full grown men are of such a description that the specified number of such passengers may be equally well accommodated in the space which would be required for such number of infantry as aforesaid.

General provisions.

By 53 G. 3. c. 88. reciting, that by 10 G. 1. c. 10. The sellers and dealers in coffee, tea, cocoa nuts and chocolate, and chocolate makers, and coffee-house keepers, and chocolate-house keepers, were to make certain entries, and verify them on oath; and also that by 26 G. 3. c. 59. dealers in foreign wine were to keep certain accounts of certain quantities sent out, and verify such accounts on oath; and that by 19 G. 3. c. 68., manufacturers and dealers in tobacco, were to keep certain accounts of the quantities sent out, and verify them on oath, it is enacted, that no such verification on oath shall be made or required; but the truth of the entries made shall be verified upon the declaration in writing of and subscribed by the persons respectively in those recited acts mentioned, and upon neglect or refusal so to verify by declaration or subscription, or for any false or untrue declaration, such persons respectively shall for each and every such offence severally forfeit and lose, 100*l*.

s. 2. Every seller of and dealer in coffee, tea, cocoa nuts, or chocolate, and every dealer in and seller of foreign wine, and every manufacturer of, and dealer in tobacco or snuff respectively, as the case may require, shall, on the demand of any officer under whose survey he shall then be, enter into the said books or on such papers respectively the quantities of the said several commodities which such seller, &c. respectively is by the said recited acts respectively required to enter at the respective times in the said recited acts respectively mentioned, in the book or paper in that behalf respectively mentioned in the said recited acts, and shall also immediately afterwards, if demanded by such officer, return every such book or paper to the officer in the said recited acts in that behalf respectively mentioned; and the truth of the entries made in every such book or paper so returned shall then be verified upon such declaration as aforesaid, under the penalty of 100*l*. for every neglect or refusal to enter the quantity of any of the said commodities which any such seller, &c. so required to enter or to return any such book or paper in manner last aforesaid.

Certain dealers to make entries in books on being required by excise officer.

Penalty.

Penalties how to
be recovered.

f. 3. All penalties, &c. imposed by this act shall be sued for, &c. as any fine, &c. can be by any law of excise, or by action of debt, &c. one moiety to His Majesty, the other moiety to him who shall inform, &c.

Licenses.

Whereas by 43 G. 3. c. 69. Certain duties of excise are imposed for and upon all licences to be taken out, according to the laws in each case made and provided, by every common brewer of table beer not being a common brewer of strong beer; every common brewer of strong beer; every maker of wax candles or spermaceti candles for sale; every dealer in or seller of wax or spermaceti candles, not being a maker of such candles: every chandler or maker of candles other than wax or spermaceti candles for sale; every person trading in, vending, or selling coffee, tea, cocoa nuts, or chocolate; every glass maker; every tanner; every tawer; every dresser of hides and skins in oil; every currier; every maker of vellum or parchment; every maltster or maker of malt for sale; every maker of metheglin or mead for sale; every maker of paper or pasteboard; every paper stainer; every person trading in, vending, or selling any gold or silver plate, or any goods or wares in which any quantity of gold exceeding two pennyweights and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under 30 ounces in weight, in any one separate and distinct ware or piece of goods, is or shall be manufactured; every person trading in, vending, or selling any gold or silver plate, or any goods or wares in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of 30 ounces or upwards, in any one separate and distinct ware or piece of goods, is or shall be manufactured; every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is or shall be manufactured or taken in, or delivering out pawns of such plate, goods, or wares; every refiner of gold or silver; every calico printer; every printer, painter, or stainer of linens, cottons, or stuffs; every maker of soap for sale; every distiller or maker of low wines or spirits for sale or for exportation within that part of *Great Britain* called *England*; every rectifier of spirits within that part of *Great Britain* called *England*; every dealer in brandy or other spirituous liquors or strong waters, not being a retailer in any part of *Great Britain*; every retailer of distilled spirituous liquors or strong waters in *Great Britain*, not being a retailer of plain aqua vitæ only, made or distilled from *British* materials in that part

of *Great Britain* called *Scotland*; every starch maker; every maker of any kind of sweets or made wines, other than mead, for sale; every retailer of *British*-made wines or sweets; every manufacturer of tobacco or snuff; every person who shall first become a manufacturer of tobacco or snuff, for every such licence; every dealer in or seller of tobacco or snuff within the limits of the chief office of excise in *London*, every dealer in or seller of tobacco or snuff in any other part of *Great Britain* out of the said limits; every maker of vinegar for sale; every retailer of foreign wine in *England*, who shall not have an excise licence for retailing distilled spirituous liquors or strong waters, or a licence for the retailing of beer, ale, or other exciseable liquors; every retailer of foreign wine in *England*, who shall have taken out a licence for retailing beer, ale, and other exciseable liquors, but shall not have an excise licence for retailing distilled spirituous liquors or strong waters, for every such licence to retail foreign wine; every retailer of foreign wine in *England*, who shall have an excise licence for retailing distilled spirituous liquors or strong waters; every wire drawer or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire in *Great Britain*: And whereas by 51 G. 3. c. 87. a duty of excise is imposed for and upon every licence to be taken out according to the said last-mentioned act, by persons making the liquor in the said act in that behalf mentioned, commonly called or known by the name of beer colouring: And by 49 G. 3. c. 81. upon any licence to be taken out by any printer, painter, or stainer of silks; and by 51 G. 3. c. 69. upon any licence to be taken out by any maker of flint glass, or of phial glass, authorizing him to make use of any hearth in or for the annealing of flint glass or phial glass: it is enacted, that upon the death of any person or persons so licensed, or upon the removal of any person or persons so licensed from the house or premises in which such licence shall authorize him to make or manufacture, trade, deal in, vend, or sell any of the commodities aforesaid, the commissioners of excise for the time being, or any one of them, and the several collectors and supervisors of excise in *England* respectively within their respective collections and districts, may authorize and empower the executors, administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing, who shall be possessed of such house or premises, in like manner to make or manufacture, &c. &c. the several sorts of commodities mentioned in such licence, in the same house or premises where such person or persons so licensed by virtue of such licence, carried on such trade during the

Executors, &c. of persons having licences may carry on trade till the licences expire.

residue of the term for which such licence was originally granted, without taking out a new licence during the residue of the said term.

Beer.

By the 53 G. 3. c. 1. the 52 G. 3. c. 65. is continued till *October 1, 1813.*

Period for using
sugar in the
brewing of beer
may be extended
by proclamation.

And by *f. 2.* his majesty at any time after *October 1, 1813,* may permit common brewers or retailers of beer or ale to make use of brown or *Muscovado* sugar in the brewing or making of beer, ale, or worts, by his proclamation at any time or times not less than 30 days from the date of such proclamation or order in council, until 40 days after the then next meeting of parliament, under the rules, &c. contained in the said recited act.

Glass.

Whereas by a clause in 38 G. 3. c. 89. makers of glass are allowed to take rock salt from any warehouse belonging and adjoining to any salt mine or pit, for the purpose of making mineral alkali or flux for glass, upon bond or security being given that all such rock salt shall be really and truly employed, spent, and consumed in the making of mineral alkali or flux for glass; and by another clause in the said act, glass makers and all other persons are prohibited from using such rock salt, or any part thereof, or any acid materials to be produced therefrom, after being used in the making of such mineral alkali or flux for glass, for any other purpose than that of making mineral alkali or flux for glass; and whereas for the purpose of using the same in the manufacture of alum it is expedient, under and subject to the rules, &c. hereinafter in that behalf contained, to allow glass makers to deliver from any such workhouse, &c. entered as in the said act is mentioned by any maker or makers of glass as being intended to be made use of in or for the making or keeping mineral alkali or flux for glass, the muriate of potash arising from the manufacture of any such rock salt by any such glass maker into mineral alkali or flux for glass; it is enacted, that it shall be lawful for any maker of glass to deliver from any such workhouse, &c. so entered, to any maker of alum, any muriate of potash for the purpose of being used in the manufacture of alum, upon bond or security being given by such maker of alum, in double the duty of such muriate, that all such muriate shall be really and truly employed, spent, and consumed by such maker of alum in the manufacture of alum; which bond or security shall

Glass makers
may deliver
from entered
warehouses mu-
riate of potash to
be used in the
making of alum.

shall be discharged, upon the said maker of alum, or his agent or chief workman, making oath before the collector of excise of the collection in which the alum works to which such muriate shall be permitted, shall be situated, (which oath such collector is to administer), that all the said muriate for which such bond shall have been given was made use of in the manufacture of alum there, and for no other purpose whatsoever; and the supervisor or officer of excise, under whose survey such maker of alum shall then be, at the same time certifying his belief of the truth of the matters so sworn to.

f. 2. Provided always, that before any maker of alum shall be permitted to receive, or to have delivered for him any such muriate, such maker shall make true and particular entry in writing of every workhouse, &c. by him intended to be used in or for the keeping of muriate of potash, and in and for the using thereof in the manufacture of alum, at the office of excise within the compass or limits whereof such workhouse, &c. respectively shall be situate; and if any such maker shall receive or have delivered to or for him, her, or them, any such muriate of potash, without having first made such entry as aforesaid, such maker so offending shall for every such offence forfeit and lose the sum of 100*l.* together with all the muriate of potash which shall at any time be found in any workhouse, &c. by such maker, used in or for the keeping of muriate of potash, whereof no such entry as last aforesaid shall be made.

Alum makers to make entry of places for keeping potash.

f. 3. And that from *July 5, 1813*, there shall be levied and paid a duty of excise of 20 shillings for every ton weight of muriate of potash delivered by any maker of glass for the purpose of being used in the manufacture of alum.

A duty of 20*s.* per ton of muriate of potash.

f. 4. Duty to be under the management of the commissioners of excise.

f. 5. So often as any maker of glass shall have occasion to deliver any muriate of potash from any such his entered workhouse, &c. to or for any maker of alum, for the purpose of using the same in the manufacture of alum, such maker of glass shall give previous notice, in writing, to the proper officer of excise under whose survey such workhouse, &c. shall then be, by the space of two hours, of his intention so to deliver as aforesaid, and shall specify in such notice the day, and the hour of the day, when he intends to weigh and deliver such muriate of potash, and the quantity thereof which he intends so to deliver, with the christian and surname of the maker of alum, to or for whom the same is so intended to be delivered, and the place at which his alum works at which the same is so intended to be delivered are situate, and by what conveyance the said muriate of potash

Before delivery of potash notice to be given to the proper officer.

is intended to be removed; and thereupon such officer of excise, who shall be ordered by the proper supervisor of excise so to do, and who shall not have any other necessary and unavoidable employment at the time, shall attend, and take account of all the muriate of potash so to be delivered, and shall make a just report and return thereof to the commissioners of excise, as the case may require, or to such person as they the said commissioners, or any three of them, shall appoint or employ to receive the same, and such report or return shall be a charge upon such maker of glass.

Officers to keep an account of the delivery of all muriate of potash.

f. 6. No such muriate of potash shall be delivered out of or from any workhouse, &c. belonging to or used by any maker of glass, for the purpose or under any pretext of being used in the manufacture of alum, or shall be afterwards delivered or received at any alum works, or at any workhouse, &c. belonging to any maker of alum, but in the presence of the proper officer of excise, who shall make and keep an account in writing, containing the real weight or quantity of the muriate so delivered out and received at any such alum works, or workhouse, &c. belonging to or used by any such maker of alum, together with the day of delivery and receipt as aforesaid; and which account so to be made and kept shall also contain the name of the maker of alum to whom delivered, and for the use of what alum work, and to whom belonging.

Samples may be taken by the officer.

f. 7. And any officer of excise may take at any time a sample of any muriate of potash or other materials alledged to be muriate of potash, at any time in the possession of any glass maker, or of any alum maker, paying for the same (if demanded) the value thereof; and in case any glass maker or any alum maker shall refuse to permit such sample upon his paying for the same (if demanded), they respectively shall for every such offence forfeit 100*l*.

Permits to be granted for the removal of Muriate of potash.

f. 8. Where any glass maker shall have occasion to remove any muriate of potash from any such workhouse, &c. for the making or keeping mineral alkali or flux for glass, the officer of excise shall, without fee or reward, from time to time, upon a request note being made and delivered by such glass maker according to the directions of this act, give a permit in writing, signed by them, expressing the quantity so to be removed, and the name of the person from whom and to whom the same is to be removed, and that the duty in respect thereof has been paid; and shall therein limit the time within which the same shall be removed from the workhouse, &c. and within which the same shall be delivered and received into the workhouse, &c. of the maker of alum to whom the same is permitted to be sent.

f. 9. No such permit shall be granted, or be valid, unless such maker shall make and send to the officer of excise hereby authorized to grant such permit, a request note in writing, specifying the name of the maker of alum to whom it is to be sent, the quantity intended to be removed, and for the removal of which such permit is required, and also the number and contents of the casks or other packages containing the same, and whether to be removed by land or by water, and by what mode of conveyance such muriate is intended to be sent.

Note specifying certain particulars, to be delivered before permits are granted.

f. 10. No muriate of potash shall be brought into any workhouse, &c. used by any maker of alum, without an authentic permit produced to and left with the officer of excise under whose survey such maker shall then be, on pain of forfeiting all such muriate so brought in without such permit.

No muriate of potash to be admitted into the possession of a maker of alum without a permit.

f. 11. Every maker of alum shall, within six hours next after any such muriate shall be received or delivered, give to the officer of excise under whose survey he shall then be, notice in writing of the receipt and delivery thereof; on pain of forfeiting for every such offence 50l.

On receipt of muriate of potash, notice to be given the proper officer.

f. 12. In case in the muriate of potash brought in to be used at any such alum work, for the purpose of being used in the manufacture of alum, any decrease shall be found exceeding the rate of 1 lb. in every cwt. of such muriate specified in the permit, the maker of alum to whose use the said muriate of potash was so delivered at such work as aforesaid, shall forfeit 50l.

Only a decrease of 1 lb. in a 100 allowed.

f. 13. Every maker of glass shall every day enter in a book, or on a paper to be provided for that purpose, an exact account of every quantity of muriate of potash, and the weight thereof sold, delivered, or sent out, with the name of the alum maker to or for whom it was so sold, &c. and the place of his alum works, and such book or paper shall be returned to the next office of excise every six weeks, and the truth of such entries verified upon the oath of such maker, or his chief workman or agent, before the proper collector or supervisor of excise, who shall administer such oath; and in case of neglect or refusal to keep such book or paper; or to make such entries, or to return the same as hereinbefore directed, or to verify the said entries or any of them upon oath, such maker of glass shall, for every such offence, forfeit 100l.

Maker of glass to keep an account of the quantity of muriate of potash delivered to alum works, and return the same to the next office of excise.

f. 14. Every such maker of glass shall, within one week after he shall have or ought to have made such entry upon oath as last aforesaid, pay off all the duties in respect of muriate of potash, which shall be due from him; on pain, in neglect or refusal, of forfeiting for every such offence

Duty to be cleared in a certain time.

double the sum of the said duties, whereof the payment shall be so neglected as aforesaid.

Officers may at all times enter premises.

§. 15. The officers of excise, or any of them, from time to time and at all times, by day and by night, upon his request or demand, (but if in the night then in the presence of a constable or other lawful officer of the peace), may enter into every workhouse, &c. used by any maker of glass or alum in or for the storing or keeping of muriate of potash, or any other matter alledged to be passing under the denomination of muriate of potash, and to take an account of the quantity and quality, which shall at any time be in the custody or possession of any such maker.

Scales and weights to be provided, to take an account of the weight of the muriate of potash.

§. 16. Every maker of glass, and every maker of alum, shall keep proper scales and weights at the place where he shall have any muriate of potash, and shall, at his own expence, find and affix a fit and proper hook or staple in a proper place, to be approved of in writing under the hands of the respective surveyors or supervisors of excise, and also permit any officer of excise to use the same, for the purpose of weighing and taking an account of the muriate which shall be in the possession of any such maker respectively; and if any such maker shall neglect or refuse so to provide or to keep such scales and weights, or shall not, at his own expence, find and affix a fit and proper hook or staple, in a proper place, to be approved as aforesaid, or shall not permit or suffer any officer or officers of excise to use the same as aforesaid, or shall in the weighing use or cause or suffer to be used, any false or insufficient scales or weights, or shall practise any art or contrivance, by which any such officer be hindered from taking the just weight, and ascertaining the true quantity, in every such case such maker of glass, or of alum (as the case may be), shall forfeit 100*l.* together with all such false or insufficient scales and weights respectively.

Makers to assist the officers in taking an account of the weight.

§. 17. Every maker of glass, and every maker of alum, shall when required by the proper officer of excise, with a sufficient number of his servants, assist to the utmost of his power such officer in weighing and taking such account, on pain of forfeiting 100*l.*

Penalty on removing muriate of potash to evade duty.

§. 18. If any person shall take, remove, or carry away any muriate of potash, with intent to evade the duty by this act imposed, he shall forfeit 50*l.*, and all the muriate so taken, &c.

Penalty on concealing potash.

§. 19. In case any muriate shall be deposited or concealed, with an intent to defraud the duties, it shall be forfeited, and shall be seized by any officer of excise, and the person in whose custody found shall forfeit 100*l.*; and the better to enable such officer to discover such muriate so forfeited,

if any such officer shall have cause to suspect that any such shall be so deposited, or concealed in any place whatsoever, then, if such place be within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners of excise, or any two of them, or before one justice of the county, city, or liberty where such place shall be, or in case such place shall be in any other part of *Great Britain*, upon oath made by such officer before one justice for the county, &c. where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or any two of them, or the justice respectively, as the case may require, before whom such oath shall be made if they shall judge it reasonable, by special warrant, under their respective hands and seals, to authorize such officer by day or by night, but if in the night-time, then in the presence of a constable or other officer of the peace, to enter into every such place where he shall so suspect such muriate to be so deposited or concealed, and to seize and carry away all such muriate of potash which he shall then and there find so forfeited.

§. 20. In case any maker of alum, to whom, or to whose use, or on whose account, any such muriate shall be delivered from any workhouse, &c. belonging to or used by any maker of glass; or in case any other shall use such muriate or any part thereof, for any use or purpose other than in the manufacture of alum, or shall, after any such muriate of potash, or any part thereof, shall have been used in the manufacture of alum as aforesaid, use or employ the *Residuum*, *Caput mortuum*, or any remains thereof, for any other purpose than in the manufacture of alum, the maker of alum, or other person so offending, shall for each such offence forfeit 100l.

Muriate of potash from glass houses to be used only in the manufacture of alum.

§. 21. If any question shall arise, whether any substance, matter, or material, substances, matters, or materials, which shall be seized as and for muriate of potash, forfeited under this act, be muriate of potash, the proof of their not being muriate of potash, shall lie upon the owner or claimer thereof.

Proof of muriate of potash to lie on the owner.

§. 22. In all cases where any officer of excise is authorized or required to ascertain the quantity of muriate of potash by weight, no less quantity shall be weighed at one draft than 1 cwt.; and every such officer in the weighing, shall give the turn of the scale in favour of the crown, and in lieu thereof shall make an allowance at the rate of 5 lbs. in every half ton.

How muriate of potash shall be weighed.

§. 23. If any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or

Penalty on persons obstructing officers.

officers of excise in the due execution of this act, or shall by force or violence, after any such officer shall have seized any muriate of potash, or any substance, matter, or material, substances, matters, or materials, as or for muriate of potash forfeited under this act, rescue or cause to be rescued any such muriate of potash, or substance, &c., or shall attempt so to do, every such person so offending shall, for each such offence, forfeit 100*l*.

Penalty on bribing officers.

f. 24. If any person shall give or offer to give any bribe to any officer of excise, in order to corrupt such officer, either to do contrary to the duty of such officer in the execution of this act, or to neglect to do any act belonging to the business of such officer in the execution of this act, or to connive at or conceal any fraud relating to any of the regulations by this act prescribed, or not to discover the same: every person so offending shall, for every such offence, (whether such offer or proposal be accepted or not), forfeit and lose 500*l*.

f. 25. Glass makers or alum makers not to act as justices, nor persons interested in such trading or business.

Penalties how to be recovered.

f. 26. Fines, penalties, and forfeitures, shall be recovered or mitigated, as any fine, &c. may be by any law of excise, or by action of debt, &c., in any of his majesty's courts of record, one moiety to his majesty, the other moiety to him who shall inform, discover, or sue for the same.

f. 27. Powers of former acts relating to the excise to extend to this act.

By 53 G. 3. c. 119., the 49 G. 3. c. 63. and 51 G. 3. c. 69. (relating to spread window glass, crown glass, and flint and phial glass), are respectively continued to August 1, 1814.

Malt.

Notice of time to be specified for steeping of malt.

By 53 G. 3. c. 9., where any maltster or maker of malt shall, in the notice in writing by him given or caused to be given to the officer of excise under whose survey he shall then be, of the particular hour or time of the day when he intends to wet corn or grain to be made into malt, specify that it is the intention of such maltster or maker of malt to continue the same in steep for the space of 65 hours from the time of its being first begun to be wetted, it shall be lawful for such maltster or maker of malt, who shall have wetted such corn or grain according to such notice, to continue the same in steep and covered with water for the said space of 65 hours, notwithstanding the 52 G. 3. c. 128.

Time of beginning to steep, or taking grain out of the cistern.

f. 2. Provided always, that no maltster or maker of malt, having so as aforesaid specified such his or her intention, shall begin to wet or steep any such corn or grain specified

in

in such notice to be by him or her intended to be continued in steep for the said space of 65 hours, at any other time than between the hours of 8 in the evening and 11 at night; and any such having so as aforesaid specified such his intention, shall be at liberty to begin to wet or steep, and to wet or steep any such corn or grain so specified to be intended to be continued in steep for the said space of 65 hours, at any time between the hours of 8 in the evening and 11 at night, and no such maltster or maker shall empty or take any such corn or grain from or out of his or her cistern, uting vat, or other vessel or utensil used for the wetting or steeping thereof, at any other time than between the hours of 1 and 4 in the afternoon; and if any such maltster, &c. having so as aforesaid specified such his intention, and having wetted or begun to wet any such corn or grain to be made into malt, shall neglect or refuse to continue the same or any part thereof in steep or covered with water for any longer or shorter space of time than 65 hours, from the time of its being first begun to be wetted, or shall begin to wet or steep any such corn or grain at any other time than between the hours of 8 in the evening and 11 at night; or shall empty or take any such corn or grain from or out of his or her or their cistern, uting vat, or other vessel or utensil, and for the wetting or steeping thereof, at any other time than between the hours of 1 and 4 in the afternoon of that day on which such 65 hours shall expire, in every such case the maltster, &c. so offending shall for every such offence forfeit 200l.

Penalty 200l.

§. 3. And whereas by the 52 G. 3. c. 128., every maltster or maker of malt shall erect, make, and construct every cistern by him intended to be used for the wetting or steeping of corn or grain to be made into malt, in such manner and form that any officer of excise may easily, safely, and securely have access to the same, and conveniently gauge in any part of two sides of such cistern the corn or grain which shall at any time be contained therein, under the penalty of 200l. And whereas by means of the ladder and moveable plank mentioned in the said act, any cistern may be accurately gauged although not more than one side of such cistern be accessible, and it is therefore expedient to make the provision in the behalf hereinafter mentioned; it is therefore enacted, that no maltster or maker of malt shall incur or be liable to the said penalty, who shall provide such ladder and such moveable plank, and shall also so construct his cistern or cisterns, if more than one, so that the said moveable plank may be laid across every such cistern in every part thereof, in such a manner and form that any officer of excise may easily and securely have access to such cistern

Securing access to the officers to gauge the cisterns.

cistern and cisterns, respectively and conveniently gauge in every part thereof the corn or grain which shall at any time be contained in such cistern and cisterns respectively, notwithstanding only one side of such cistern or cisterns, as the case may require, may be accessible, provided such side shall be freely accessible throughout the whole length thereof.

Salt.

Fish curers allowed a credit of 50lbs. of salt for every cwt. of dried conger, &c.

By 53 G. 3. c. 124. every fish curer to whom any salt shall, under the 38 G. 3. c. 89., be delivered duty free, for the purpose of curing and preserving fish, to be allowed a credit not exceeding 50 lbs. weight of salt for every 100 weight of dried conger, pollock, bream, ray, and skate, and so in proportion for any greater or less quantity.

§. 2. Regulations of acts relative to allowing salt duty free extended to this act.

Salt seized to be sold by auction free of duty either for exportation or for curing fish, and if it cannot be sold, it shall be destroyed.

By 53 G. 3. c. 22., if upon the putting up to public sale any salt seized and condemned, no person bid such sum of money as shall equal the duties, together with the costs of seizure, &c. the commissioners of the customs or excise shall cause the same to be offered to public sale by way of auction, and sold free of duty to the best bidder, at such places as the said respective commissioners shall think proper, either for exportation, or for the purpose of curing or preserving fish, and a moiety of the surplus (if any) after defraying the necessary expences of the seizure, &c. shall be applied for the benefit of the officer seizing, and if not sold for such purposes, the said commissioners shall cause the said salt to be destroyed; and in case the money arising from the sale so to be sold shall not be sufficient to satisfy, or shall not be more than sufficient to satisfy the whole of such costs and expences, together with 5s. per bushel over and above the same, or if such salt shall be destroyed as aforesaid, the said commissioners shall cause to be given to the officer by whom the same was seized, such pecuniary reward as they respectively shall think proper, not exceeding 5s. per bushel for each bushel so sold or destroyed.

Reward to the officers for seizing such salt.

Sweets.

Regulations as to the keeping of low wines or spirits of different stills or of different charges.

By 53 G. 3. c. 147., no distiller shall, at one and the same time, have, keep, or continue in any cask by him used, for a low wine cask, any low wines or spirits extracted from different stills, unless such stills shall have been charged with wash at one and the same time, and also worked off at one and the same time, nor shall any such distiller or distillers have, keep, or continue in any cask by him, her,

or them made use of as or for a low wine cask, any low wines or spirits extracted from different charges of one and the same still; on pain of forfeiting for every such offence 200*l*.

§. 2. Every such distiller shall provide a proper spirit cask sufficient to contain the whole quantity of spirits which shall be extracted from the low wines produced from each charge of his wash still, and shall run and convey into such spirit cask immediately from the low wine still or low wine stills all such spirits so extracted; and so soon as the whole quantity extracted from the low wines produced from each charge of such wash still or wash stills, shall be collected in such cask from the low wine still or low wine stills, the officer shall take a true gauge, and try the strength of such spirits, and cast and compute the same at the strength of one to ten over hydrometer proof, and keep an exact account thereof; and such officer shall take such gauge and try the strength immediately on being required by any such distiller so to do; and every such distiller shall keep and continue in such cask all such spirits extracted from the low wines produced from each charge, until the proper surveyor, supervisor, or officer of excise shall have gauged the same and ascertained the strength thereof; and no such distiller shall at one and the same time have, or continue in any cask by him, used for such spirit cask as aforesaid, any spirits extracted from low wines produced from different wash stills, unless such wash stills shall have been wholly charged with wash at one and the same time, and worked off at one and the same time, nor any spirits extracted from different low wine stills, unless such low wine stills shall have been charged at one and the same time, and also worked off at one and the same time with low wines produced from wash of one and the same charge of the wash still or wash stills; on pain of forfeiting for every offence in each of such cases 200*l*. Provided always, that no distiller shall be subject to any such penalty for not keeping or continuing in such cask all such spirits or feints extracted from any charge of any still, until the proper surveyor, supervisor, or officer shall have gauged the same and tried the strength thereof, if such distiller shall have given to the officer under whose survey he, she, or they shall be, notice in writing two hours at the least of the time when such spirits or feints are to be pumped up or removed from such cask, and if the proper surveyor, supervisor, or officer shall not at the time specified in such notice, or within one hour after, attend to gauge and ascertain the strength of such spirits or feints in such cask.

§. 3. Every such distiller shall provide a proper feint cask sufficient to contain the whole quantity of feints which shall

Penalty 200*l*.

Casks to be provided for the spirits produced from each charge of wash still.

Strength of spirits to be tried.

Regulations for keeping such spirit cask.

Penalty 200*l*.

Proviso.

Cask to be provided to contain the whole quantity

ity of feints
produced from
each charge.

Strength of feints
to be tried.

Penalty 200l.
Pumps for emp-
tying the spirit
and feint cask to
be secured.

Penalty on ob-
structing officers,
200l.

Allowance made
for the deficiency
of spirits in the
case herein men-
tioned.

be produced from each charge of his low wine still or stills, and shall immediately run and convey all the feints which shall be produced from each charge, directly from such still or stills into the said feint cask, and so soon as the whole quantity shall be collected in such feint cask from such charge, the proper officer shall take a true gauge, and try the strength of such feints, and cast and compute the same at the strength of 1 to 10 over hydrometer proof, and keep an exact account thereof; and every such distiller shall keep and continue in such feint cask all the feints produced from each charge, until the proper surveyor, &c. shall have gauged the same and ascertained the strength, and shall distil all such feints with and amongst the waste of the next charge, or next charge but one; on pain of forfeiting on neglect and refusal in each of such cases, the sum of 200l.

§. 4. Every such distiller shall permit the proper officer of excise to secure the pump for emptying the spirit and feint cask respectively, so as to prevent such pump from being used in the absence of the officer, and also to secure the lid or head of the low wine spirit and feint casks respectively.

§. 5. If any such distiller or any workman or servant belonging to him, shall obstruct any officer of excise in the due execution of this act, he shall forfeit 200l.

§. 6. And whereas according to law as the same now stands, distillers in *England*, making, distilling, extracting, or producing any quantity of spirits exceeding the proportion of 21 gallons for every 100 gallons of wort or wash brewed or made from sugar, are bound to pay duty for all such spirits as aforesaid exceeding the proportion aforesaid, at and after the rate of 7s. 11½d. for every gallon of such excess, computed at the strength of 1 to 10 over hydrometer proof: And whereas it may sometimes happen that from the influence of the atmosphere on the process of distillation for the conversion of such wash into spirits, a less proportion of such spirits may be produced, and it is therefore expedient to make such provision as is hereinafter mentioned; an allowance shall be made for such deficiencies, and the duty paid only on the balance or total of excesses above the deficiencies of produce to be ascertained yearly in the month of *July*, or when such distiller shall cease working: Provided always, that nothing hereinbefore contained shall be deemed to extend to any excess of spirits made by any distiller who shall be discovered to have become bankrupt, or to be in declining or decayed circumstances, so as to induce the commissioners of excise to deem it expedient to have recourse to the prerogative process of extent or *Diem clausit extremum*, or to a summary prosecution for the recovery of the duties for or in respect

respect of any such excess or excesses of spirits as last
aforesaid.

f. 7. The 52 G. 3. c. 3., shall be deemed to have com-
menced as to all such things therein contained, in respect
whereof no special commencement is thereby directed or
provided, from and immediately after Feb. 8. 1812., and to
have been in force, and shall remain in force during the
term that the prohibition of the distillation of spirits from
corn or grain shall be and remain in force.

Commencement
of 52 G. 3. c. 3.
explained.

f. 8. Fines, &c. imposed by this act, shall be sued for by
such means as any fine, &c. may be by any law of excise, or
by action of debt, &c. and one moiety shall be to his majesty,
and the other moiety to him who shall inform, &c.

Penalties how to
be levied.

Felony.

BY 52 G. 3. c. 130. f. 1., reciting that notwithstanding the
enactment of the several statutes of 1 G. 1. c. 5. 9 G. 1.
c. 22. 9 G. 3. c. 29. and the 41 G. 3. c. 24., it was expe-
dient that further provision should be made for the pro-
tection of property not within the provisions of the said
acts, it is enacted, that every person who shall, from the
passing of this act, wilfully or maliciously burn or set fire
to any buildings, erections, or engines, which shall be used
or employed in the carrying on or conducting of any trade
or manufactory, or any branch or department of any trade
or manufactory of goods, wares, or merchandize, of any
kind or description whatsoever, or in which any goods,
wares, or merchandize, shall be warehoused or deposited,
shall be adjudged guilty of felony, without benefit of clergy,
and shall suffer death as in cases of felony without benefit of
clergy.

See Pr. 6. 475 0.
Ch 26. Sec 4. 5.

Punishing per-
sons wilfully de-
stroying any
building or en-
gine used in ma-
nufacturing.

f. 2. If after the passing of this act any person or persons
unlawfully, riotously, and tumultuously assembled together
in disturbance of the public peace, shall unlawfully and
with force demolish or pull down, or begin to demolish or
pull down, any erection and building or engine which shall
be used or employed in the carrying on or conducting of
any trade or manufactory, or any branch or department of
any trade or manufactory of goods, wares, or merchandize,
of any kind or description whatsoever, or in which any
goods, wares, or merchandize, shall be warehoused or de-
posited, that then every such demolishing or pulling down,
or beginning to demolish or pull down, shall be adjudged
felony,

Extending pro-
visions of former
act to other
buildings, goods,
and machinery.

felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in cases of felony without benefit of clergy.

Value of, or damage done to manufactories and machinery therein may be recovered, as under 1 G. 1. c. 5.

§. 3. The person or persons injured or damnified by such demolishing or pulling down, wholly or in part, of any such erection, building, or engine as aforesaid, shall be entitled to, and may recover the value of such erection, building, or engine, and of the machinery belonging thereto, or used therein which shall be destroyed in such demolishing as aforesaid, or the amount of the damage which may be done to any such erection, building, or engine, or machinery aforesaid, in such tumultuous and riotous demolishing in part as aforesaid; and such value or damage shall and may be recovered, levied, raised, and reimbursed, in such manner and form, and by such ways and means as are particularly provided in 1 G. 1. c. 5.

How to proceed to recover damages.

§. 4. Provided no person shall be enabled to recover any damages by virtue of this act, unless he himself or by his servant, within two days after such damage or injury done him by any such offender or offenders, shall give notice of such offence done and committed unto some of the inhabitants of some town, village, or hamlet, near unto the place where any such fact shall be committed, and shall within four days after such notice, give in his examination upon oath, or the examination upon oath of his servant or servants, that had the care of his erections, buildings, engines, or machinery so destroyed or damaged as aforesaid, before any justice of the peace of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing shall be bound by recognizance to prosecute such offender or offenders by indictment or otherwise, according to the law of this realm: Provided also, that no person who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action or suit within one year next after such offence shall be committed.

By 53 G. 3. c. 162., reciting it to be necessary that so much of the 52 G. 3. c. 44. as enacts, 'That in all cases where any court or courts shall think fit to sentence any person

person or persons, convicted before such court or courts of felony without benefit of clergy, to imprisonment as or for the punishment or part of the punishment for such offence, such court or courts may, if they shall think fit so to do, moreover direct that the person or persons so convicted shall during such imprisonment be kept to hard labour,' should be repealed, and that other provisions in lieu thereof should be made in respect to the sentences of persons convicted before such court or courts of felony with benefit of clergy: it therefore is enacted, that so much of the said act as enacts, 'That in all cases where any court or courts shall think fit to sentence any person or persons, convicted before such court or courts of felony without benefit of clergy, to imprisonment as or for the punishment or part of the punishment for such offence, such court or courts may, if they shall think fit so to do, moreover direct that the person or persons so convicted shall during such imprisonment be kept to hard labour,' shall be repealed; and that, from and after the passing of this act, it shall and may be lawful for any court to pass upon any person, who shall be lawfully convicted before any such court of felony with benefit of clergy, or of any grand larceny or of any petit larceny, the sentence of imprisonment to hard labour, either simply and alone, or in addition to any other sentence which such court may or shall be authorized by law to pass upon any person lawfully convicted of any of the offences aforesaid, as to such court shall seem fit; and such person shall thereupon suffer such other sentence, and be moreover imprisoned and kept to hard labour, or be simply imprisoned and kept to hard labour, in such place and for such time as such court shall think fit to direct, not exceeding the time for which such courts may now imprison for such offences.

Certain provisions in recited act repealed.

Punishment in cases of felony, grand and petit larceny.

Fire Arms.

BY 53 G. 3. c. 115., certain provisions are enacted respecting the manufacture of fire arms:

§. 1. Provides that no barrel shall be used in the making or manufacturing of any gun, fowling piece, blunderbuss, pistol, or other description of fire arms usually called small arms, unless the same shall have been duly proved at the proof house of the gunmakers company in *London*, or at the proof house to be established under the provisions of this act, or some proof house belonging to his majesty, or

Barrels of fire arms not to be used unless the same are duly proved.

other proof house established as a public proof house by law; which last his majesty may establish as, and where, and under such rules as he pleases.

Penalty on persons using or selling barrels not duly proved.

And by *f.* 2. every person who shall use, or cause or procure to be used any barrel in the making, manufacturing, or finishing of any gun, fowling piece, blunderbuss, pistol, or any other description of fire arms as aforesaid, or who shall sell or cause to be sold any barrel for the making of any gun, &c. which shall not first have been duly proved, and marked as proved at the gunmakers company's proof house in *London*, &c. &c. (as in first section,) shall forfeit for every such offence not exceeding 20*l.*, to be recovered as hereinafter mentioned.

f. 3. This act not to extend to Scotland or Ireland, to arms for military service, or for *East India* company.

f. 4, 5, 6, relate to the establishing of a gun barrel proof house and corporation in *Birmingham*.

f. 7. Establishes a proof scale and proof marks, for fire arms brought to the said proof house to be so erected; *f.* 8. relates to the appointment at *Birmingham* of a proof master.

Penalty on persons forging or counterfeiting the marks.

f. 9. And be it further enacted, that if any person whatsoever shall forge or counterfeit, or cause or procure, &c. any mark or stamp used or which may be used at either of such proof houses as aforesaid, for marking barrels in pursuance of this act; or shall wilfully or knowingly sell or use in the making or manufacturing of any gun, fowling piece, blunderbuss, pistol, or other description of arms as aforesaid, any barrel whereon any mark or stamp, which shall be forged or counterfeited in imitation of or to resemble any mark or stamp so used or to be used at either of such proof houses as aforesaid; every such person so offending, and being thereof lawfully convicted, shall forfeit and pay for every such offence not exceeding 20*l.*, to be recovered as hereinafter mentioned.

f. 10. Relates to the appointment of a treasurer.

f. 11. To the application of the sums received for proving.

Offences to be heard before and determined by justices of the peace.

f. 12. Any offence against this act shall be heard and determined in a summary way before any two justices of the peace for the county, -riding, division, city, town, liberty, or place, where any such offence shall be committed; and the conviction may be upon the oath of one witness, and the amount of the forfeiture or penalty for every such offence shall be fixed and determined by such justices, not exceeding the sums hereinbefore mentioned; and one moiety shall be paid and payable to the informer, and the other moiety to the overseers of the parish or place where such offence shall

be committed; and in case any such forfeiture or penalty shall not be forthwith paid pursuant to such conviction, and the person so convicted shall not signify his intention to appeal against such conviction, and forthwith enter into recognizance before such justices, himself in the penalty of 40*l.*, with two sufficient sureties in the penalty of 20*l.* each, with condition to personally appear and prosecute such appeal at the next general quarter or general sessions of the peace to be holden for the county, &c. where such offence shall have been charged to have been committed, such justices shall, by warrant under their hands, cause the same penalties to be levied by distress and sale of the offenders goods and chattels, together with the costs and charges attending such distress and sale; and in case no sufficient distress can be had, such justices shall, by warrant under their hands, commit the offender to the common gaol or house of correction within their jurisdiction, for any time not exceeding six calendar months.

f. 13. Convictions to be drawn up in the form of the schedule to this act; and shall be transmitted to the next general sessions or general quarter sessions.

f. 14. If any person so convicted shall think himself aggrieved thereby, he shall have liberty to appeal to the next quarter sessions which shall be held for the county, &c. wherein such offence was committed; who shall determine the said appeal, and award just and reasonable costs to either party, which decision shall be final; and if upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted, shall be confirmed, such appellant shall forthwith pay the forfeitures or penalty mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment, such appellant shall immediately be committed by the said court to the common gaol or house of correction of the county, &c. where any such offence may have been committed, there to remain for any time not exceeding six calendar months, unless such penalty and costs shall be sooner paid.

Appeal may be had to the general sessions or general quarter sessions, whose decision shall be final.

Form of Conviction.

to wit. } *BE it remembered, that on the ——— day of ——— in the ——— year of our Lord ——— is convicted before us [naming the justices] two of his majesty's justices of the peace for the county of ——— [or, riding, city, liberty, division, town, or place] for that the said ——— [here state the offence] contrary to the statute made in the fifty-third year of the reign of king George the third, intituled An Act [here set forth the title of this act]: And we the*
 Vol. II. 3 M *said*

said justices do hereby adjudge and determine the said ——— for the said offence, to forfeit and pay the sum of ——— of lawful money of Great Britain, and do order one moiety thereof to be forthwith paid by him to ——— [the informer] and the other moiety thereof to the overseers of the poor of the parish of [where the offence was committed.] Given under our hands the day and year above written.

Gaols.

BY the 53 G. 3. c. 113. reciting the 43 *Eliz. c. 2.* whereby the justices, at their general sessions, were directed to rate every parish to a certain sum, in manner therein expressed; and that all surplusage of money which should remain in the stock of any county, should, by the discretion of the justices of the peace in their quarter sessions, be bestowed for the relief of the poor hospitals in that county, and for other charitable purposes: And reciting the 11 G. 2. c. 20. passed in aid of the said 43 *Eliz. c. 2.* and the 12 G. 2. c. 29., and that the sums secured to be paid by the said acts are not sufficient for the relief of the poor prisoners confined in the said *King's Bench* and *Marshalsea* prisons: And that no adequate relief has been provided for the poor prisoners confined in the *Fleet* prison: And that *Bethlem Hospital* is a charity for the reception and cure of lunatics and distracted persons from all parts of the kingdom, and from his majesty's fleets and armies; and any surplus which shall remain of the monies provided by this act, after relieving the poor prisoners in the said prisons, may with great propriety be bestowed towards the relief of the said hospital: the said acts so far as the same relate or apply to the yearly sums provided for the relief of the poor prisoners confined in the *King's Bench* and *Marshalsea* prisons, and also the said 11 G. 2. are repealed.

Treasurers directed to pay the sums mentioned in the schedule out of the county rate.

f. 2. And every treasurer of every county and division of a county mentioned in the schedule to this act annexed, shall, on or before Aug. 1st. in every year, pay out of the public stock or rates of such county and division of a county respectively, the several sums of money specified in the schedule to this act annexed, in manner following; (that is to say), the sums for the relief of the prisoners confined in the *King's Bench* and *Marshalsea* prisons, to be paid to the treasurer for the county of *Surrey*; and the sums for the relief of the prisoners confined in the *Fleet* prison, to be paid to the treasurer or chamberlain of the city of *London*.

f. 3. The

f. 3. The treasurer for the time being of the county of *Surrey* shall from time to time pay the sums of money to be received by him from the said treasurers, and also the sums to be paid out of the public stock or rates of the said county of *Surrey*, for the relief of the prisoners in the *King's Bench* and *Marshalsea* prisons, to such sufficient person or persons residing near the said prisons respectively, at such times and in such manner as the justices of the peace for the county of *Surrey*, or the major part of them, at their general quarter sessions, shall from time to time order and direct.

To whom treasurer is to pay the money.

f. 4. To whom the chamberlain of *London* is to pay the money.

f. 5. Receipts signed by the treasurer for the time being of the county of *Surrey*, and the treasurer or chamberlain for the time being of the city of *London*, for any monies payable to them respectively by virtue of this act, shall be sufficient discharges for the same; and receipts signed by any person or persons appointed by the justices of the peace of the county of *Surrey* and city of *London* respectively, at their quarter sessions respectively, to receive any monies payable by virtue of this act, shall be sufficient discharges to the treasurer for the county of *Surrey*, and the treasurer or chamberlain of the city of *London* respectively.

Receipts of treasurers to be sufficient discharges.

f. 6. If any treasurer shall neglect or refuse to pay over any such respective sums of money as ought to be paid by him to the treasurer of the county of *Surrey*, and the treasurer or chamberlain of the city of *London* respectively as aforesaid, or any treasurer of the county of *Surrey*, or treasurer or chamberlain of the city of *London*, shall neglect or refuse to pay over such respective sums of money as ought to be paid by him respectively by virtue of this act, then, upon the certificate or certificates, on oath, of the treasurer or treasurers, person or persons, to whom the same respectively ought to be paid, being delivered to either of his majesty's courts of *King's Bench* and *Common Pleas*, or to the court of *Marshalsea*, of such neglect or refusal, the said courts, or either of them, may make a rule on every such treasurer so neglecting or refusing, requiring such treasurer to pay the money so reported or certified to be due as aforesaid; and obedience to such rules respectively shall be enforced by the said courts, as rules of the said courts respectively are usually enforced.

Courts of King's Bench and Common Pleas may enforce compliance with the regulations of the act.

f. 7. Every person who now is or hereafter shall be elected or appointed treasurer of any county, or division of a county, named in the schedule to this act annexed, shall, within one calendar month after *Aug. 1*, or within one calendar month after his election or appointment respectively into such office of treasurer, transmit his name and place of abode to the clerk of the crown in his majesty's said court of *King's Bench*, to be by him entered or registered in a book to be kept for

Treasurers to register their names and places of abode.

that purpose, for which entries no fee or reward shall be taken; and in case of neglect or refusal, upon the report of the said clerk of the crown, made to the said court of *King's Bench*, of such neglect or refusal, every such treasurer shall be liable to be proceeded against as in case of neglecting or refusing to pay such money as aforesaid.

Charge of rules of court to be paid by treasurer, in case of their neglect.

§. 8. As often as there shall be occasion for the said courts, respectively, to make any rule as aforesaid, on any of the said treasurers in pursuance of this act, the whole cost and charge of making such rule, and all subsequent charges arising therefrom, shall be paid by the treasurer whose default or neglect shall cause the making of such rule.

Money to be weekly distributed to prisoners.

§. 9. The sums provided by this act, shall from time to time be distributed by the person or persons to whom the same respectively shall be directed to be paid as aforesaid, by weekly payments, for the relief of such prisoners as shall from time to time be ordered to be relieved, in manner hereinafter mentioned.

Limiting the sum to be allowed to prisoners.

§. 10. Any justice of the peace for the county of *Surrey* may order such relief as he shall think proper, to be given to any prisoner confined in the said *King's Bench* or *Marshalsea* prisons, and any alderman or justice of the city of *London*, may order such relief as he shall think proper, to be given to any prisoner confined in the said *Fleet* prison, but subject nevertheless to the provisions hereinafter contained, and to any rules, orders, and regulations which shall be made as hereinafter is mentioned: Provided always, that the sum to be given to any one prisoner shall not exceed 6d. *per diem*.

No prisoner charged in execution, to be relieved after the first day of the next term.

§. 11. Provided always, that no prisoner who shall be charged in execution for debt, shall be relieved by virtue of this act, after the first day of the term next following the time when he shall be charged in execution.

No prisoner to be relieved possessed of property above a certain sum.

§. 12. Provided always, that no prisoner shall be ordered to be relieved by virtue of this act, until he shall first have made oath before a judge of one of the courts of law at *Westminster*, or of the *Marshalsea*, or a commissioner appointed by one of the said judges to take affidavits, that he is not worth 10l. in all the world, and that he cannot subsist himself without the relief or assistance provided by this act; and for wilfully forswearing or perjuring himself, he shall suffer as a person convicted of wilful and corrupt perjury.

§. 13. That no prisoner shall be relieved who shall have become superseenable, or entitled to be discharged under any act for the relief of insolvent debtors.

§. 14. Directing the appropriation of surplus monies.

§. 15. Accounts to be kept and verified upon oath.

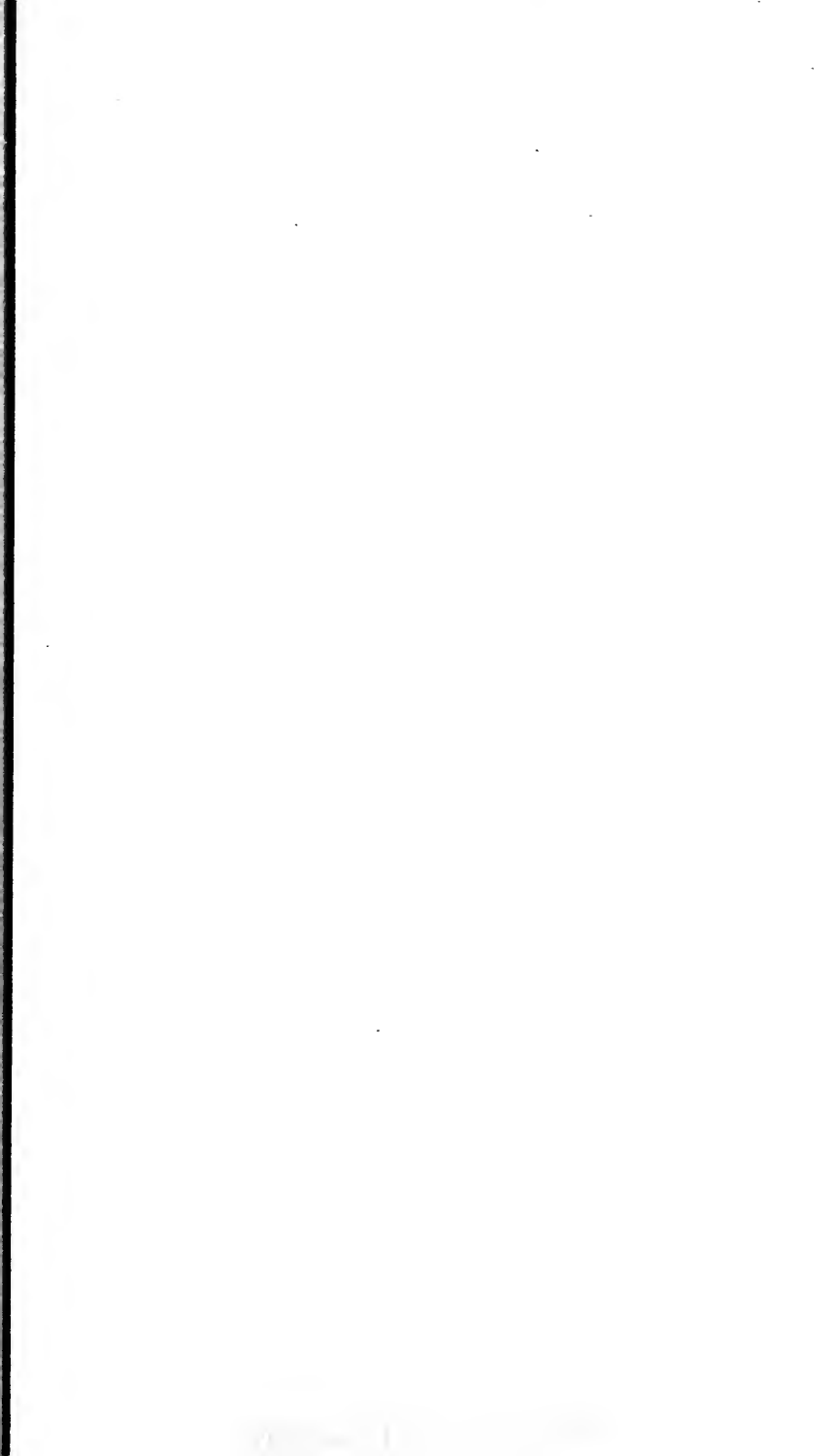
§. 16. Justices empowered to make regulations at their sessions in addition to the provisions of the act.

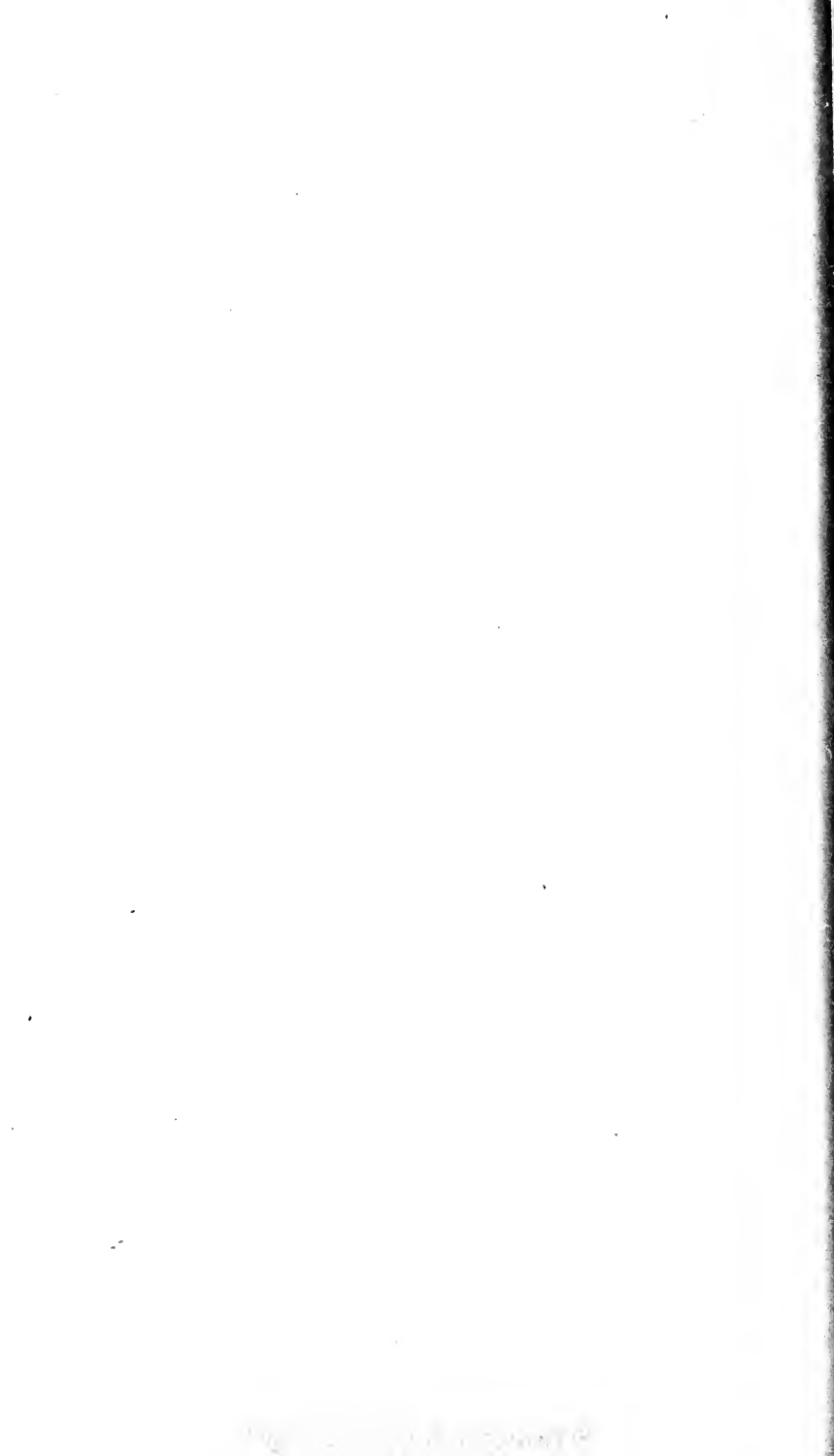
The SCHEDULE to which this act refers.

COUNTIES AND DIVISIONS.				The SUMS to be paid by them for the Relief of the Prisoners in the Prisons of		
				King's Bench.	Fleet.	Marshall- sea.
				£.	£.	£.
Bedford	-	-	-	5	5	—
Berks	-	-	-	10	10	—
Bucks	-	-	-	10	5	—
Cambridge	{	County	-	5	5	—
Cambridge		Isle of Ely and Town of Cam- bridge	-	5	5	—
Chester	-	-	-	10	10	—
Cornwall	-	-	-	10	5	—
Cumberland	-	-	-	10	5	—
Derby	-	-	-	10	10	—
Devon	-	-	-	20	15	—
Dorset	{	East Division	-	5	5	—
		West Division	-	5	5	—
Durham	-	-	-	15	10	—
York	{	East Riding	-	10	10	—
		North Riding	-	15	10	—
		West Riding	-	30	20	—
Essex	{	East Division	-	10	5	—
		West Division	-	10	5	25
Gloucester	-	-	-	15	10	—
Hereford	-	-	-	10	5	—
Hertford	-	-	-	10	10	—
Huntingdon	-	-	-	5	5	—
Kent	{	East Division	-	10	5	—
		West Division	-	10	5	25
Lancaster	-	-	-	30	25	—
Leicester	-	-	-	10	10	—
Lincoln	{	Holland Division	-	5	5	—
		Kesteven Do.	-	5	5	—
		Lindsay Do.	-	10	5	—
Middlesex	-	-	-	100	50	200
Norfolk	-	-	-	15	10	—
Northampton	{	East Division	-	5	5	—
		West Division	-	5	5	—
Northumberland	-	-	-	15	10	—
Nottingham	{	North Division	-	5	5	—
		South Division	-	5	5	—

COUNTIES AND DIVISIONS,				The SUMS to be paid by them for the Relief of the Prisoners in the Prisons of		
				King's Bench.	Fleet.	Marshal sea.
				£.	£.	£.
Oxford	-	-	-	10	5	—
Rutland	-	-	-	5	5	—
Salop	-	-	-	10	10	—
Somerset	{ West	-	-	10	5	—
	{ East	-	-	10	5	—
Southampton	-	-	-	15	10	—
Stafford	-	-	-	15	10	—
Suffolk	Beccles Division		-	—	5	—
	Woodbridge Do.		-	5	—	—
	Bury St. Edmund's Do.		-	5	5	—
	Ipswich Do.		-	5	—	—
Surrey	-	-	-	50	40	50
Suffex	{ East Division	-	-	10	5	—
	{ West Division	-	-	10	5	—
Warwick	-	-	-	15	10	—
Westmorland	{ East Ward	-	-	5	—	—
	{ Kendal Ward	-	-	—	5	—
Wilts	-	-	-	15	10	—
Worcester	-	-	-	10	10	—
Anglesea	-	-	-	2	2	—
Brecon	-	-	-	2	2	—
Cardigan	-	-	-	2	2	—
Carmarthen	-	-	-	3	3	—
Carnarvon	-	-	-	2	2	—
Denbigh	-	-	-	3	3	—
Flint	-	-	-	2	2	—
Glamorgan	-	-	-	3	3	—
Merioneth	-	-	-	2	2	—
Monmouth	-	-	-	3	3	—
Montgomery	-	-	-	2	2	—
Pembroke	-	-	-	2	2	—
Radnorshire	-	-	-	2	2	—

END OF THE SECOND VOLUME.





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